

SUB-STATE CONSTITUTIONAL IDENTITY AND THE UNITED KINGDOM'S PLURAL CONSTITUTION

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ABSTRACT. *This article examines how the devolved legislatures of Scotland, Wales and Northern Ireland have developed distinct institutional, normative and conflict-based constitutional identities that position them as constitutional actors within the UK's territorial order. Moving beyond analyses focused solely on competence allocation and the Sewel Convention, it argues that devolved identity is articulated through institutional design, claims to democratic legitimacy and episodes of contestation with Westminster. Disputes arising from Brexit, the UK Internal Market Act 2020, rights-based legislation and the Northern Ireland Protocol reveal how devolved institutions frame authority in terms of popular sovereignty, civic nationhood, consent and parity of esteem. While parliamentary sovereignty remains legally intact, these developments expose a widening gap between doctrinal hierarchy and constitutional practice. The article contends that the UK now operates as a differentiated constitutional system in which authority is legally centralised yet politically dispersed across multiple constitutional sites.*

KEYWORDS: *constitutional identity, devolution, sub-state legislatures, plural constitutionalism, parliamentary sovereignty.*

I. INTRODUCTION

The territorial constitution of the UK has been in a state of continuous flux since the establishment of devolved legislatures in Scotland, Wales and Northern Ireland in 1998. Academic commentary has largely focused on the distribution of competences, the operation of the Sewel Convention and the resilience of parliamentary sovereignty.¹ While these analyses illuminate the mechanics of devolution, they tend to overlook its identity-forming dimensions and the ways in which devolved legislatures

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¹ See e.g. M. Gordon, *Parliamentary Sovereignty in the UK Constitution: Process, Politics and Democracy* (Oxford 2015); S. Tierney, "The Territorial Constitution and the Brexit Process" (2019) 72 *Current Legal Problems* 59; M. Keating, *State and Nation in the United Kingdom: The Fractured Union* (Oxford 2021); A. McHarg et al. (eds.), *The Scottish Independence Referendum: Constitutional and Political Implications* (Oxford 2016).

position themselves as constitutional actors within the UK's uncoded order. McCorkindale's suggestion that devolution has matured into a "fundamental principle" of the constitution points in this direction, but further work is needed to examine how devolved legislatures articulate and contest constitutional identity in practice.²

This article advances that line of inquiry by analysing how the Scottish Parliament, Senedd Cymru and Northern Ireland Assembly have cultivated distinct constitutional identities operating across three dimensions: institutional (reflected in procedures and internal cultures), normative (grounded in claims to democratic legitimacy, nationhood or peace settlement) and conflict-based (expressed through contestation with Westminster). Drawing on constitutional identity and pluralism scholarship, it argues that these devolved bodies function as autonomous constitutional actors whose authority cannot be understood solely through statutory delegation.³ Their practices and responses to constitutional conflict both draw upon and strain the orthodox unitary account of the constitution.

The argument builds on, rather than claims novelty against, a substantial tradition of scholarship that has treated the UK as a complex, pluralised constitutional order.⁴ The originality of the contribution lies not in asserting that parliamentary sovereignty has been eroded, nor in rediscovering the plural logic of the territorial constitution, but in applying the conceptual vocabulary of constitutional identity – developed in the context of the EU,⁵ federal and quasi-federal states⁶ and, more recently, scholarship attentive to the risks of identity essentialism and

² C. McCorkindale, "Devolution: A New Fundamental Principle of the UK Constitution" in M. Gordon and A. Tucker (eds.), *The New Labour Constitution: Twenty Years On* (Oxford 2022).

³ G. Jacobsohn, *Constitutional Identity* (Cambridge, MA 2010); M. Rosenfeld, "Constitutional Identity" in M. Avbelj and J. Komárek (eds.), *The Oxford Handbook of Comparative Constitutional Law* (Oxford 2012); J. Scholtes, "Abusing Constitutional Identity" (2021) 22 *German Law Journal* 534; L. Pech and K.L. Scheppele, "Illiberalism Within: Rule of Law Backsliding in the European Union" (2017) 19 *Cambridge Yearbook of European Legal Studies* 3; P. Blokker, "Populist Counter-Constitutionalism, Conservatism, and Legal Fundamentalism" (2019) 15 *European Constitutional Law Review* 519; R.D. Kelemen and M.A. Orenstein, "Europe's Autocracy Problem", *Foreign Affairs*, available at <https://www.foreignaffairs.com/articles/poland/2016-01-07/europes-autocracy-problem> (last accessed 17 March 2026); M.P. Maduro, "Three Claims of Constitutional Pluralism" in M. Avbelj and J. Komárek (eds.), *Constitutional Pluralism in the European Union and Beyond* (Oxford 2012); M. Kumm, "Who Is the Final Arbiter of Constitutionality in Europe? Three Conceptions of the Relationship between the German Federal Constitutional Court and the European Court of Justice" (1999) 36 *Common Market Law Review* 351.

⁴ N. Walker, "The Idea of Constitutional Pluralism" (2002) 65 *M.L.R.* 317; N. Walker, *Intimations of Sovereignty: The Politics of Boundary-Making* (Oxford 2015); N. MacCormick, *Questioning Sovereignty: Law, State and Nation in the European Commonwealth* (Oxford 1999).

⁵ See *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1974] C.M.L.R. 540 (BVerfGE) ("Solange I"); *Re Application of Wunsche Handelsgesellschaft* [1987] 3 C.M.L.R. 225 (BVerfGE) ("Solange II"); Consolidated Version of the Treaty of the European Union (OJ 2012 C 326 p.13), art. 4(2).

⁶ See P. Popelier, G. Delledonne and N. Aroney (eds.), *The Routledge Handbook of Subnational Constitutions and Constitutionalism* (London 2022).

authoritarian mobilisation – to the devolved legislatures themselves.⁷ While devolution has been widely studied, the identity-based lens developed here enables a more fine-grained account of how devolved institutions construct legitimacy, express difference and articulate the boundaries of their authority.

This identity-based analysis also permits a reassessment of the post-Brexit period. Brexit undoubtedly provided a major site of constitutional contestation, intensifying claims of institutional autonomy and exposing the fragility of political conventions. But since 2020 the central dynamics of territorial constitutional conflict have shifted. In Scotland, attempts to construct a progressive rights-based constitutional identity – manifest in the United Nations Convention on the Rights of the Child (UNCRC) (Incorporation) (Scotland) Bill and the Gender Recognition Reform (Scotland) Bill – were curtailed through judicial review and the first-ever deployment of a section 35 order under the Scotland Act 1998.⁸ In Wales, resistance to the UK Internal Market Act (UKIMA) 2020 marked a more assertive constitutional posture.⁹ In Northern Ireland, disputes surrounding the Protocol and the Windsor Framework have repeatedly tested the viability of power-sharing.¹⁰ These developments reveal that constitutional identity in the UK has continued to evolve in ways that complicate narratives centred solely on Brexit and require updated analytical tools.

The article proceeds by outlining the conceptual framework before examining the institutional, normative and conflict dimensions of devolved constitutional identity in Scotland, Wales and Northern Ireland. It concludes by reflecting on the implications of these developments for the UK's territorial constitution.

In adopting an identity-based framework, the aim is not to deny the continuing legal supremacy of the UK Parliament. Rather, it is to show that in a plural and politically contested constitutional order, legal hierarchy alone cannot account for how authority is understood, exercised or resisted. Devolved constitutional identities have become integral to the operation and

⁷ See Jacobsohn, *Constitutional Identity*; Rosenfeld, "Constitutional Identity"; Scholtes, "Abusing"; Pech and Scheppele, "Illiberalism Within"; Blokker, "Populist Counter-Constitutionalism".

⁸ *Re United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill* [2021] UKSC 42, [2021] 1 W.L.R. 5106; Office of the Secretary of State for Scotland and Government Equalities Office, “Policy Statement of Reasons on the Decision to Use Section 35 Powers with Respect to the Gender Recognition Reform (Scotland) Bill”, available at <https://assets.publishing.service.gov.uk/media/63c68c66e90e074eeeb1c26e/policy-statement-section-35-powers-Gender-Recognition-Reform-Scotland-Bill.pdf> (last accessed 17 March 2026); see also *For Women Scotland Ltd. v Lord Advocate* [2022] CSIH 4, (2022) S.C. 150.

⁹ Welsh Parliament Legislation, Justice and Constitution Committee, “UK Internal Market Bill: Report on Legislative Consent”, available at <https://senedd.wales/media/w0lcyau/cr-ld13861-e.pdf> (last accessed 17 March 2026).

¹⁰ See *Re Allister's Application for Judicial Review* [2023] UKSC 5, [2024] A.C. 1113; D. Phinnemore and L.C. Whitten, "The Protocol/Windsor Framework and the 2024 Democratic Consent Vote", available at <https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/Explainers/TheProtocolWindsorFrameworkandthe2024DemocraticConsentVote> (last accessed 17 March 2026).

the tensions of the post-devolution settlement. Understanding those identities enriches our account of the UK constitution and clarifies the pressures that now shape its future trajectory.

II. CONCEPTUAL FRAMEWORK: CONSTITUTIONAL IDENTITY

Constitutional identity provides a useful conceptual vocabulary for understanding how constitutional orders define and preserve their core commitments. It refers not simply to entrenched constitutional provisions but to the broader, historically grounded self-understanding of a constitutional system, shaped by political experience, interpretive practices and institutional culture. As Jacobsohn argues, constitutional identity “emerges from the interplay between constitutional text and constitutional politics”,¹¹ developing through iterative engagement between institutions and the societies they govern. Rosenfeld similarly emphasises that identity is neither fixed nor merely aspirational; rather, it reflects the tension between continuity and change that characterises all living constitutions.¹² In this sense, constitutional identity is a product of constitutional practice. It encompasses both fundamental principles and the lived normative commitments that give a constitutional order its distinctive character.

The concept acquires particular force in multilevel constitutional systems, where authority is dispersed across multiple sites. Constitutional pluralism recognises that in such systems – federal, quasi-federal or supranational – no single actor exercises uncontested interpretive supremacy.¹³ At these points of overlap, constitutional identity becomes the register in which conflicts about fundamental values, institutional authority and the boundaries of constitutional change are articulated. This dynamic is most visible in the EU. Long before the Lisbon Treaty introduced Article 4(2) of the Treaty of the European Union (“TEU”), national courts developed doctrines designed to safeguard core constitutional commitments even while accepting the general primacy of EU law. Italy’s *controlimiti* doctrine, Germany’s *Solange* jurisprudence and the Spanish and French courts’ pre-Lisbon case law all express the intuition that integration cannot require the abandonment of a constitution’s essential features.¹⁴ These identity-based limits operate within a pluralist settlement that, as Walker suggests, depends on mutual accommodation rather than hierarchical ordering.¹⁵

¹¹ Jacobsohn, *Constitutional Identity*, 7.

¹² Rosenfeld, “Constitutional Identity”, 756.

¹³ Maduro, “Three Claims”.

¹⁴ See *Frontini v Ministero delle Finanze* (No. 183) [1974] 2 C.M.L.R. 372 (C.C., Italy); *Solange I* and *Solange II*; *Statement by the Constitutional Court No. 1/2004 of 13 December 2004* (T.C., Spain); *Decision No. 2006-540 DC of July 27 2006* (C.C., France).

¹⁵ Walker, “Constitutional Pluralism”.

Yet recent experience also reveals the risks inherent in constitutional identity. Scholars have shown that identity claims can be deployed in ways that distort rather than sustain constitutionalism. Pech and Scheppele warn that the concept has been appropriated by illiberal governments as a “practical excuse to sidestep transnational legal obligations”, particularly in Hungary and Poland, where constitutional identity has been invoked to defend measures that undermine judicial independence and entrenched constitutional norms.¹⁶ Kelemen likewise argues that identity-based pluralism has proved vulnerable to strategic abuse, enabling backsliding under the guise of constitutional self-definition.¹⁷ These developments caution against treating identity as inherently benign. As comparative experience demonstrates, claims framed in the language of identity can entrench power, shield unconstitutional reforms from scrutiny or destabilise multilevel constitutional arrangements.

A more nuanced approach, however, avoids collapsing the concept into its most problematic uses. Scholtes proposes that constitutional identity must be distinguished from “identity abuse”, the latter characterised by inconsistent, instrumental or anti-constitutional invocations of the concept.¹⁸ In his account, identity retains analytical value in plural constitutional orders when rooted in genuine constitutional essentials and articulated through democratic and good-faith processes. Identity claims grounded in historically continuous constitutional principles – rather than manufactured for political expediency – can still serve as legitimate boundary markers. This distinction is important for contexts beyond the EU: it shows that the risks of identity are not inherent in the concept but contingent upon the constitutional culture within which it is deployed.

The UK’s uncoded and politically constituted order presents a distinct set of analytical challenges. Although the UK lacks a codified constitution, it possesses a constitutional identity of its own, grounded in principles such as parliamentary sovereignty, the rule of law and the historic norms and statutes that structure political authority. Scholars increasingly argue that devolution has become part of this evolving identity, reflecting the UK’s recognition – however uneven – of internal national pluralism.¹⁹ Devolution scholarship has traditionally focused on statutory delegation, legal hierarchy and intergovernmental convention. An identity-based approach complements these accounts by directing attention to how devolved institutions understand and narrate their authority within a plurinational state.

¹⁶ Pech and Scheppele, “Illiberalism Within”.

¹⁷ Kelemen and Orenstein, “Autocracy Problem”.

¹⁸ J. Scholtes, *The Abuse of Constitutional Identity in the European Union* (Oxford 2023).

¹⁹ See N. Walker, “Constitutionalism and Constitutional Identity in the United Kingdom” in M. Loughlin and N. Walker (eds.), *The Paradox of Constitutionalism* (Oxford 2007); P. Leyland, *The Constitution of the United Kingdom*, 6th ed. (Oxford 2021); Keating, *State and Nation*; J. Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford 1999).

Importantly, adopting an identity-based perspective for the UK does not require assuming that identity claims advanced by devolved actors are normatively uncontested or constitutionally authoritative. In light of the comparative literature on identity misuse, such claims must be approached critically. In an uncoded constitution grounded in parliamentary sovereignty, identity does not demarcate entrenched limits. Its value lies instead in explaining how devolved institutions interpret their constitutional environment and articulate authority within it.

The following sections apply this framework to Scotland, Wales and Northern Ireland, examining how institutional design, normative commitments and episodes of conflict together generate distinctive sub-state constitutional identities within the Union.

III. INSTITUTIONAL IDENTITY OF THE DEVOLVED LEGISLATURES

Institutional identity is the first and often the most concrete, dimension of sub-state constitutional identity. It captures how devolved legislatures design and deploy their internal rules, practices and organisational cultures to assert a sense of autonomy distinct from the centre. In multilevel systems, such differentiation is a key signal of an emergent constitutional selfhood: by shaping procedures, each legislature crafts a distinct institutional persona that reflects and reinforces the broader political and constitutional environment in which it operates.²⁰

Within the UK, Holyrood, the Senedd and Stormont exemplify this phenomenon. Each has drawn on statutory frameworks, standing orders and historical context to build procedural distinctiveness and cultivate internal cultures that mark them as more than subordinate arms of Westminster. These institutional arrangements are not static. They evolve in response to political pressures and constitutional disputes, reflecting the iterative quality of identity formation noted in comparative theory.²¹

A. Scotland

The institutional identity of the Scottish Parliament was deliberately designed to contrast with the Westminster model. The Consultative Steering Group (“CSG”), established in 1998, articulated four founding principles – power-sharing, accountability, accessibility and equal opportunities²² – which were embedded into the Standing Orders of the Scottish Parliament, granting committees not only scrutiny but also

²⁰ Popelier, Delledonne and Aroney (eds.), *Routledge Handbook of Subnational Constitutions*, 6–8.

²¹ Jacobsohn, *Constitutional Identity*, 47–50.

²² Consultative Steering Group on the Scottish Parliament, “Shaping Scotland’s Parliament”, 5–10, available at https://www.parliament.scot/-/media/files/history/report_of_the_consultative_steering_group.pdf (last accessed 17 March 2026).

legislative initiative powers.²³ This design aimed to depart from Westminster's majoritarian logic in favour of a more deliberative ethos.²⁴

Early practice appeared to support these aspirations. The Land Reform (Scotland) Act 2003,²⁵ shaped by committee work and civic consultation, exemplified the Parliament's intended deliberative character and its self-presentation as accessible and transparent.²⁶

However, institutional identity is not static. The emergence of an Scottish National Party (SNP) majority in 2011 revealed the fragility of Holyrood's committee system. As Simpkins notes, the committees increasingly mirrored government priorities, limiting their independence.²⁷ Moreover, James Mitchell argues that the Scottish Parliament has, over time, drifted towards a more centralised, executive-dominant model, with committees weakened, scrutiny diminished and partisanship entrenched.²⁸ The "new politics" once promised has, in Mitchell's assessment, given way to a legislature that too often mirrors the practices it was designed to replace.²⁹ These institutional critiques acquire constitutional significance: if Holyrood no longer exhibits a distinctive ethos of deliberation and power-sharing, its claim to embody a substantively different constitutional tradition is undermined. Yet moments of constitutional conflict have simultaneously reinforced Holyrood's political identity as an institution asserting Scotland's distinct constitutional position.³⁰

The Continuity Bill litigation in 2018 reaffirmed Westminster's legal supremacy, with the Supreme Court striking down provisions inconsistent with the EU (Withdrawal) Act 2018.³¹ Holyrood's subsequent enactment of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 reflected an institutional recalibration, rather than a retreat,

²³ Standing Orders of the Scottish Parliament, 6th ed., 11th Rev., Rule 6.2. See also C. Jeffery and J. Mitchell (eds.), *The Scottish Parliament 1999-2009: The First Decade* (Edinburgh 2009).

²⁴ See P. Cairney, "The Analysis of Scottish Parliament Committee Influence: Beyond Capacity and Structure in Comparing West European Legislatures" (2006) 45 *European Journal of Political Research* 181; A. McHarg, "Devolution in Scotland" in J. Jowell and C. O'Cinneide (eds.), *The Changing Constitution*, 9th ed. (Oxford 2019).

²⁵ Land Reform (Scotland) Act 2003. See also M. Keating et al., "Does Devolution Make a Difference? Legislative Output and Policy Divergence in Scotland" (2003) 9 *Journal of Legislative Studies* 110.

²⁶ See D. Arter, *The Scottish Parliament: A Scandinavian-Style Assembly?* (London 2004); B.K. Winetrobe and R. Hazell, "What Has the Scottish Parliament Achieved, and What Can It Teach Westminster?" in W.L. Miller (ed.), *Anglo-Scottish Relations, from 1900 to Devolution and Beyond* (Oxford 2005); P. Cairney, "The Capacity of Scottish Parliamentary Committees" (2006) 45 *European Journal of Political Research* 181; M. Shephard and P. Cairney, "The Impact of the Scottish Parliament in Amending Executive Legislation" (2005) 53 *Political Studies* 303.

²⁷ F. Simpkins, "Parliamentary Practices in Holyrood: 'New Politics' and the SNP" (2022) 20 *Lisa: Revue de Législation Comparée*.

²⁸ J. Mitchell and J. Johnston (eds.), *The Scottish Parliament: At Twenty* (Edinburgh 2019).

²⁹ J. Mitchell, *Devolution in the UK* (Manchester 2009), chs. 4-5. See also Jeffery and Mitchell (eds.), *First Decade*.

³⁰ N. Walker, "Beyond the Unitary Conception of the United Kingdom Constitution" [2000] *Public Law* 384.

³¹ *Re UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* [2018] UKSC 64, [2019] A.C. 1022.

embedding new scrutiny mechanisms over retained EU law within devolved competence.³²

Similar dynamics emerged in litigation over the UNCRC (Incorporation) (Scotland) Bill³³ and the proposed independence referendum.³⁴ In each case, the Supreme Court confirmed the limits of devolved competence under the Scotland Act 1998, underscoring that Westminster's authority remains legally intact. These decisions did not prevent Holyrood from articulating a rights-based and popular-sovereignty-oriented constitutional identity, but they clarified the boundaries within which it must operate.

The constitutional friction reached an unprecedented point with the Gender Recognition Reform (Scotland) Bill in 2022. Holyrood passed wide-ranging reforms to gender recognition procedures, only for the UK Government to issue a section 35 order under the Scotland Act 1998 preventing the bill from receiving Royal Assent.³⁵ This was the first use of section 35 since devolution began. The UK Government argued that the bill would have "adverse effects" on UK-wide equalities law, while Scottish ministers denounced the order as an infringement on devolved autonomy.³⁶ When judicial review ultimately upheld the legality of the section 35 order,³⁷ Holyrood's attempt to assert a rights-driven institutional identity was curtailed not by internal failure, but by the structural asymmetry of devolution.

Taken together, these episodes suggest that Holyrood's institutional identity since 2020 has been shaped by an unresolved tension: internally, it struggles to distinguish itself from Westminster's practices, while externally, constitutional confrontations amplify its image as a parliament seeking to articulate a distinct constitutional path constrained by the central state.³⁸

B. Wales

The institutional identity of the Senedd has been shaped by a gradualist trajectory and a commitment to bilingualism, both of which distinguish it from Westminster and align with a pluralist logic of accommodation. When established by the Government of Wales Act 1998, the National

³² UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, Part 1. See also R.B. Taylor and A.L.M. Wilson, "Brexist Statutory Instruments: Powers and Parliamentary Processes", available at <https://bprecdn.parliament.scot/published/2021/8/9/9a8a8440-9512-4a1d-962f-d42d225ee663/SB%2021-45.pdf> (last accessed 17 March 2026).

³³ *Re UNCRC (Incorporation) (Scotland) Bill* [2021] UKSC 77.

³⁴ *Reference by the Lord Advocate of Devolution Issues under Paragraph 34 of Schedule 6 to the Scotland Act 1998* [2022] UKSC 31, [2022] 1 W.L.R. 5435.

³⁵ Scotland Act 1998, s. 35.

³⁶ Office of the Secretary of State for Scotland and Government Equalities Office, "Statement of Reasons".

³⁷ *Petition of the Scottish Ministers for Judicial Review of the Gender Recognition Reform (Scotland) Bill (Prohibition on Submission for Royal Assent) Order 2023* [2023] CSOH 89, (2024) S.C. 173.

³⁸ This sequence exemplifies Jacobsohn's argument that constitutional identity is forged in moments of stress, where conflict reshapes institutional self-understanding, on which, see Jacobsohn, *Constitutional Identity*, 47–49.

Assembly was conceived as a corporate body with limited secondary legislative powers.³⁹ This weak starting point reflected scepticism about Welsh devolution, but subsequent reforms steadily expanded authority: the Government of Wales Act 2006 created a separation between legislature and executive, the 2011 referendum granted primary legislative competence and the Wales Act 2017 introduced a reserved-powers model and a permanence clause.⁴⁰ The Senedd and Elections (Wales) Act 2020 renamed the institution as Senedd Cymru and lowered the voting age to 16, reinforcing its maturity as a parliament.⁴¹

This evolutionary pattern has produced an institutional identity grounded in adaptation rather than rupture.⁴² Unlike Scotland, where constitutional assertion has often been framed in more overtly nationalist terms, Wales's development has tended to proceed through negotiated reform within the Union.

Bilingualism provides a second foundation of institutional identity. The Welsh Language (Wales) Measure 2011 conferred official status on Welsh, embedding linguistic equality into the constitutional architecture.⁴³ The Standing Orders of the Senedd require proceedings, legislation and official records to operate bilingually, entrenching language as a constitutive feature of parliamentary life.⁴⁴ Far from being symbolic, these provisions function as a performative assertion of nationhood, marking the Senedd as the institutional custodian of Welsh cultural identity.⁴⁵ In this sense, bilingualism operates as a constitutional claim, situating Wales alongside sub-state polities such as Quebec and Catalonia, where language plays a central role in identity-based constitutionalism.⁴⁶

Rawlings notes that while the Senedd has cultivated a value-laden, bilingual and civic political culture, it has simultaneously struggled with limited institutional capacity – a product of an initial design that allocated only 60 Members to a legislature now responsible for extensive primary lawmaking.⁴⁷ Recent reforms to expand the Senedd to 96 Members by the next Senedd 2026 elections reflect an explicit recognition that institutional capacity is integral to constitutional identity.⁴⁸

³⁹ Government of Wales Act 1998, s. 1. See also R. Rawlings, "The Welsh Way" in Jowell and O'Cinneide (eds.), *The Changing Constitution*.

⁴⁰ Government of Wales Act 2006, Part A1 [inserted by Wales Act 2017, s. 1], Part 3.

⁴¹ Senedd and Elections (Wales) Act 2020, ss. 1–2.

⁴² D. Stirbu and L. McAllister, "Politics in Wales since Devolution" in M. Garnett and H. Pillmoor (eds.), *The Routledge Handbook of British Politics and Society*, 1st ed. (Abingdon 2020).

⁴³ Welsh Language (Wales) Measure 2011, ss. 1–5.

⁴⁴ Standing Orders of the Welsh Parliament (2026), Standing Order 15.

⁴⁵ R. W. Jones and R. Scully, *Wales Says Yes: Devolution and The 2011 Welsh Referendum* (Cardiff 2012), ch. 3.

⁴⁶ P.H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?*, 3rd ed. (Toronto 2004); J.M. Bilbao Ubillos, "Spain as a Democratic State Governed by the Rule of Law and the Catalan Secessionist Process" (2024) 16 *Hague Journal on the Rule of Law* 3.

⁴⁷ R. Rawlings, "The Strange Reconstitution of Wales" [2018] *Public Law* 62.

⁴⁸ Senedd Cymru (Members and Elections) Act 2024.

Institutional self-understanding in Wales has also been shaped by external conflict, though typically expressed with less confrontation than in Scotland. The Senedd's refusal to grant legislative consent to the UKIMA 2020 marked a more assertive constitutional posture.⁴⁹ Although Welsh devolution has often been associated with cooperative engagement, this episode positioned the Senedd as defender of devolved democratic space in the face of perceived centralisation. The COVID-19 pandemic further entrenched the Senedd's institutional identity, as divergent Welsh public-health regulations brought unprecedented visibility to the practical authority of devolved governance.⁵⁰ Rather than symbolic divergence, these powers touched directly upon daily life, reinforcing the Senedd as a locus of Welsh political authority.

In combination, these developments reveal an institutional identity characterised by gradual consolidation and episodic assertion.⁵¹ The Senedd's authority is articulated less through rupture than through the cumulative performance of autonomy within an asymmetrical constitutional framework.

C. Northern Ireland

The institutional identity of the Northern Ireland Assembly is inseparable from the Belfast/Good Friday Agreement of 1998 and its statutory embodiment in the Northern Ireland Act 1998. The settlement established a devolved legislature on consociational lines, with mandatory coalition, cross-community consent and mutual veto powers designed to secure legitimacy across a divided society.⁵² Section 1 of the Northern Ireland Act 1998 enshrines the principle of consent, declaring that Northern Ireland remains part of the UK unless and until a majority of its people decide otherwise.⁵³ This provision anchors the Assembly's institutional identity in democratic choice and recognises competing national allegiances as legitimate within the constitutional framework.

Institutionally, the Assembly's Standing Orders operationalise this logic through mechanisms such as the petition of concern, which requires cross-community support for certain decisions.⁵⁴ These provisions have been invoked in highly contentious contexts – for example, during debates on welfare reform in 2015 – illustrating both their protective function for

⁴⁹ Senedd Cymru, "Legislative Consent Memorandum on the UK Internal Market Bill", at [84], available at <https://senedd.wales/media/jxjdiawh/lcm-ld13513-e.pdf> (last accessed 18 March 2026).

⁵⁰ See Welsh Government, "Coronavirus Control Plan", available at <https://www.gov.wales/sites/default/files/publications/2020-08/coronavirus-control-plan-for-wales.pdf> (last accessed 17 March 2026).

⁵¹ Walker, "Beyond Unitary Conception".

⁵² Belfast/Good Friday Agreement 1998, Strand One; Northern Ireland Act 1998, ss. 16–17.

⁵³ Northern Ireland Act 1998, s. 1.

⁵⁴ *Ibid.*, s. 42; Northern Ireland Assembly Standing Orders (2025), Standing Order 42.

minority communities and their capacity to paralyse governance.⁵⁵ The Assembly's committee system, too, reflects the consociational design, with cross-party allocations of chairs and membership reinforcing the principle of parity of esteem.⁵⁶

The judiciary has recognised this distinctive institutional character. In *Robinson v Secretary of State for Northern Ireland*, Lord Bingham described the Northern Ireland Act 1998 as “in effect, a constitution”, acknowledging that the Assembly derives legitimacy from an international peace settlement rather than ordinary delegation.⁵⁷ Stormont is therefore not simply an administrative tier of government, but a constitutional structure grounded in a negotiated settlement.

This consociational design, while foundational to peace, renders the legislature vulnerable to political boycott. Since 2017, the Northern Ireland Assembly has experienced prolonged periods of suspension: first between 2017 and 2020, and again from 2022 to 2024 following the Democratic Unionist Party's refusal to participate in protest against the Northern Ireland Protocol.⁵⁸ These recurrent breakdowns highlight how institutional identity in Northern Ireland is bound up with inter-communal dynamics and the fragility inherent in a system requiring perpetual consent from parties representing divergent constitutional aspirations. The Windsor Framework of 2023 sought to stabilise governance by revising the Protocol and introducing the “Stormont Brake” – a mechanism allowing the Assembly to object to new EU rules applying in Northern Ireland.⁵⁹ However, the Brake operates only when the Assembly is functioning, underscoring how the effectiveness of Northern Ireland's institutional identity depends upon the operational continuity of power-sharing itself.

The strains of the post-Brexit period have also raised broader questions about the long-term viability of the institutional design. Critics argue that the existing community-designation system no longer reflects Northern Ireland's sociopolitical landscape, marginalising parties outside the traditional unionist–nationalist binary and contributing to legislative paralysis.⁶⁰ At the same time, periods of suspension have highlighted the

⁵⁵ C.E. Murtagh, “Toward Inclusive Power-Sharing in Northern Ireland: Two Steps Forward, One Step Back” in S. Keil and A. McCulloch (eds.), *Power-Sharing in Europe: Past Practice, Current Cases and Future Directions* (Princeton, NJ 2020).

⁵⁶ Northern Ireland Assembly Standing Orders (2025), Standing Orders 49, 52.

⁵⁷ *Robinson v Secretary of State for Northern Ireland* [2002] UKHL 32, [2002] N.I. 390, at [11].

⁵⁸ See D. Heenan and D. Birrell, “Exploring Responses to the Collapse of Devolution in Northern Ireland 2017–2020 through the Lens of Multi-Level Governance” (2022) 75 *Parliamentary Affairs* 596.

⁵⁹ Draft Windsor Framework (Democratic Scrutiny) Regulations 2023; Cabinet Office, “Government response to the Independent Review of the Windsor Framework”, available at <https://www.gov.uk/government/publications/government-response-to-the-independent-review-of-the-windsor-framework/government-response-to-the-independent-review-of-the-windsor-framework-html> (last accessed 25 March 2026).

⁶⁰ A. Whysall, “Northern Ireland: Challenges for the Next Westminster Government Political Future”, 12–18, available at https://www.ucl.ac.uk/social-historical-sciences/sites/social_historical_sciences/files/210.pdf (last accessed 17 March 2026).

limited autonomy of the Assembly, as core decisions affecting Northern Ireland's regulatory environment have been shaped by UK–EU negotiations rather than devolved deliberation. These dynamics complicate any account of Northern Ireland's constitutional identity: the Assembly is both a symbol of shared governance and an institution whose authority is circumscribed by both internal constitutional design and external geopolitical forces.

From a pluralist perspective, Northern Ireland epitomises the challenges of managing authority in a divided society. McGarry and O'Leary's account of consociationalism as a pluralist order – one that embeds group identities within constitutional design – helps explain why Stormont's institutional identity is simultaneously robust and fragile⁶¹: robust, because it institutionalises pluralism in law; fragile, because its functioning depends on continual negotiation and political will.⁶²

D. Analysis

Viewed comparatively, the institutional identities of the UK's devolved legislatures mirror broader patterns observed in multilevel constitutional systems. Catalonia's Parliament has used procedural autonomy – such as its committee system and Catalan-language legislation – to articulate a claim to differentiated status within Spain, often serving as a platform for constitutional dissent.⁶³ In Quebec, the primacy of French in legislative proceedings and an assertive committee structure have reinforced institutional distinctiveness while mediating relations with Ottawa.⁶⁴

In the UK, Holyrood's procedural pluralism, the Senedd's bilingual pragmatism and Stormont's power-sharing architecture similarly reflect internal constitutional cultures shaped through engagement with the centre. These institutional forms provide the framework within which claims to legitimacy are constructed and, at times, contested.

IV. NORMATIVE IDENTITY: NATIONHOOD, LEGITIMACY AND PURPOSE

Normative identity concerns the values and justificatory narratives through which legislatures present themselves as legitimate constitutional actors. In multilevel systems, such claims are articulated through statutory text, institutional design and political practice rather than mere rhetoric. As Popelier, Aroney and Delledonne observe, subnational constitutional

⁶¹ J. McGarry and B. O'Leary, *The Northern Ireland Conflict: Consociational Engagement* (Oxford 2004), ch. 4.

⁶² See A. McCulloch, "The Use and Abuse of Veto Rights in Power-Sharing Systems: Northern Ireland's Petition of Concern in Comparative Perspective" (2018) 53 *Government and Opposition* 735.

⁶³ See J. Andreu, "Constitution and Referendum on Secession in Catalonia: A Comparative Study with a Special Focus on Spain" in A.L. Basaguren and L.E. San Epifanio (eds.), *Claims for Secession and Federalism: A Comparative Study with a Special Focus on Spain* (Cham, CH 2019).

⁶⁴ See Russell, *Constitutional Odyssey*.

arrangements often express a “constituent identity” that illuminates a polity’s self-understanding.⁶⁵ The devolved legislatures’ normative identities are therefore grounded not only in political discourse but in legal instruments and institutional commitments that support claims to authority.

A. Scotland

The normative identity of the Scottish Parliament has been built around the principle of popular sovereignty, a concept that has deep historical and contemporary resonance.⁶⁶ The Scottish constitutional tradition, articulated most prominently in George Buchanan’s *De Jure Regni Apud Scotos* (originally published in 1579) and the Claim of Right Act 1689, has long contrasted with the Diceyan doctrine of parliamentary sovereignty.⁶⁷ In this tradition, political authority rests with the people, who may withdraw it from rulers who act contrary to their interests. This strand of thought was revitalised in the late twentieth century with the Claim of Right of 1989, a declaration endorsed by political parties, civic groups and churches affirming that “the Scottish people have the sovereign right to determine the form of Government best suited to their needs”.⁶⁸

Holyrood has repeatedly invoked this principle in defining its own constitutional role. In 2012,⁶⁹ and again in 2018,⁷⁰ the Scottish Parliament passed motions affirming the Claim of Right, thereby presenting itself not merely as a devolved legislature but as the institutional guardian of Scotland’s democratic community. Although such declarations do not alter the Assembly’s legal competence, they reinforce a self-understanding grounded in popular sovereignty rather than statutory delegation.⁷¹

The Scotland Act 2016 reinforced this symbolic constitutionalism by inserting a permanence clause into the Scotland Act 1998. Section 63A

⁶⁵ Popelier, Delledonne and Aroney (eds.), *Routledge Handbook of Subnational Constitutions*, 5–6.

⁶⁶ See *MacCormick v Lord Advocate* (1953) S.C. 396, 411 (Lord Cooper); MacCormick, *Questioning Sovereignty*, chs. 1–2; A. McHarg, “A Constitution for an Independent Scotland: The Draft Scottish Independence Bill”, available at <https://ukconstitutionallaw.org/2014/06/26/aileen-mcharg-a-constitution-for-an-independent-scotland-the-draft-scottish-independence-bill/> (last accessed 25 March 2026); see also Motion S5M-04710, entitled “Scotland’s Choice”, passed by the Scottish Parliament on 28 March 2027, available at <https://www.parliament.scot/chamber-and-committees/votes-and-motions/votes-and-motions-search/S5M-04710> (last accessed 18 March 2026).

⁶⁷ G. Buchanan, *De Jure Regni Apud Scotos* (Glasgow 1964); Claim of Right Act 1689.

⁶⁸ The text of which is cited in Scotting Parliament, “Scotland’s Right”, 4–5, available at <https://www.parliament.scot/-/media/files/history/scotlands-parliament-scotlands-right.pdf> (last accessed 18 March 2026).

⁶⁹ See Motion S4M-01822, entitled “Claim of Right”, available at <https://www.parliament.scot/chamber-and-committees/votes-and-motions/S4M-01822> (last accessed 18 March 2026).

⁷⁰ D. Pack, “Claim of Right for Scotland”, available at <https://commonslibrary.parliament.uk/research-briefings/cdp-2018-0171/> (last accessed 18 March 2026).

⁷¹ See R.N. Fasel and S.W. Stark, “How (Not) to Break Up: Constituent Power and Alternative Pathways to Scottish Independence” (2024) 44 O.L.J.S. 1; J. Mitchell, *The Scottish Question* (Oxford 2014).

provides that the Scottish Parliament and Government “are not to be abolished except on the basis of a decision of the people of Scotland voting in a referendum”.⁷² Though not entrenched in the strict legal sense – since Westminster retains the capacity to legislate otherwise – this clause carries normative weight, reflecting political recognition of Scotland’s distinct constitutional community.⁷³

The 2014 independence referendum crystallised this normative identity. While the referendum resulted in a vote to remain within the UK, the campaign entrenched the Scottish Parliament’s role as the institutional expression of the Scottish people’s right to choose their constitutional future.⁷⁴ The UK Supreme Court’s decision in *Re Devolution Issues under Para. 34 of Sched. 6 to the Scotland Act 1998*,⁷⁵ which confirmed that Holyrood lacked competence to legislate for a referendum without Westminster’s consent, legally reaffirmed parliamentary sovereignty but politically reinforced Holyrood’s identity as the custodian of Scotland’s democratic voice.

More recent legislative disputes have continued to shape Scotland’s normative identity. The Gender Recognition Reform (Scotland) Bill was defended by Scottish ministers as an expression of equality and dignity, yet was blocked by a section 35 order.⁷⁶ Similarly, litigation over the UNCRC (Incorporation) Bill confirmed the limits of devolved competence while leaving intact the Scottish Parliament’s aspiration to embed rights-based constitutional commitments within Scots law.⁷⁷

Scotland’s normative identity therefore rests on an alternative account of constitutional legitimacy centred on popular sovereignty and, increasingly, rights-based governance. Although legally constrained, this self-understanding continues to inform Holyrood’s constitutional posture within the Union.

B. Wales

Wales presents a more ambivalent normative constitutional identity. Unlike Scotland, where popular sovereignty has been foregrounded as an alternative theory of constitutional authority, Welsh constitutional discourse has tended to articulate legitimacy through civic values, social solidarity and cultural inclusion rather than through an explicit challenge

⁷² Scotland Act 1998, s. 63A [inserted by Scotland Act 2016, s. 1].

⁷³ MacCormick, *Questioning Sovereignty*, ch. 1.

⁷⁴ N. McEwen, “The 2014 Independence Referendum and Its Aftermath” in M. Keating (ed.), *A Wealthier, Fairer Scotland? The Political Economy of Constitutional Change* (Edinburgh 2017); McHarg et al. (eds.), *Scottish Independence Referendum*.

⁷⁵ [2022] UKSC 31.

⁷⁶ Scotland Act 1998, s. 35; Office of the Secretary of State for Scotland and Government Equalities Office, “Statement of Reasons”.

⁷⁷ *Re UNCRC (Incorporation) (Scotland) Bill* [2021] UKSC 42.

to parliamentary sovereignty.⁷⁸ This orientation reflects Wales's origins in administrative rather than political devolution, where the initial settlement was concerned less with constitutional transformation than with institutional restructuring. As Rawlings observed, Welsh constitutional development has followed a "juddering" path, marked by uneven reform rather than foundational redesign.⁷⁹

This inheritance has shaped the character of Wales's normative identity. Rather than coalescing around a singular constitutional principle, it has emerged through policy commitments and institutional practices, particularly in areas such as well-being, sustainability and bilingual inclusion.⁸⁰ The Well-being of Future Generations (Wales) Act 2015 is emblematic of this approach, embedding a statutory commitment to long-term governance and framing the Senedd as a custodian of collective welfare. These normative commitments, however, operate within a constitutional framework that was not originally conceived as transformative, producing a self-understanding grounded in aspiration but tempered by structural constraint.⁸¹

Recent institutional reforms, including the formal designation of "Senedd Cymru/Welsh Parliament", the extension of the franchise and the expansion of membership, reflect efforts to consolidate this evolving constitutional identity. They signal growing institutional confidence and an intention to strengthen representational capacity without departing from the incremental logic that has characterised Welsh devolution. Wales thus articulates a civic and socially grounded constitutional vision while remaining embedded within an asymmetrical and negotiated territorial settlement.⁸²

The same pattern was evident in Wales's response to the UKIMA 2020. Opposition to the Act was framed in terms of subsidiarity, respect for devolved competence and the preservation of territorial balance, yet it was expressed through a cooperative constitutional vocabulary rather than as a claim to foundational rupture.⁸³ Wales's normative identity therefore remains defined less by confrontation than by cumulative articulation: a constitutional posture that advances value-based commitments within the parameters of a system shaped by gradual reform.

⁷⁸ R. Rawlings, *Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution* (Cardiff 2003); S. Nason, "The 'New Administrative Law' of Wales" [2019] Public Law 703.

⁷⁹ R. Rawlings, "The Welsh Way/Y Ffordd Gymreig" in Jowell and O'Cinneide (eds.), *The Changing Constitution*. See also Stirbu and McAllister, "Politics in Wales since Devolution".

⁸⁰ See e.g. Welsh Language (Wales) Measure 2011, ss. 1–5; Standing Orders of the Welsh Parliament, Standing Order 15.

⁸¹ Rawlings, "Welsh Way".

⁸² Rawlings, "Strange Reconstitution of Wales".

⁸³ Senedd Cymru, "Legislative Consent Memorandum: UK Internal Market Bill".

C. Northern Ireland

The normative identity of the Northern Ireland Assembly is anchored in the Belfast/Good Friday Agreement of 1998 and its statutory embodiment in the Northern Ireland Act 1998. Its claim to legitimacy rests on two core principles: consent and parity of esteem. Section 1 of the Northern Ireland Act 1998 affirms that Northern Ireland's constitutional status depends on majority support, embedding the principle of consent in domestic law and signalling that ultimate authority derives from the people of Northern Ireland rather than from unilateral decision-making at Westminster.⁸⁴

Parity of esteem complements this principle by structuring governance around mutual recognition. Through cross-community consent requirements and related procedural safeguards, the Assembly institutionalises the equal constitutional legitimacy of unionist and nationalist political aspirations.⁸⁵ Although these arrangements have at times produced deadlock, they reflect a normative commitment to inclusion rather than majoritarian rule.

These principles continue to shape constitutional argument within the Assembly. In the aftermath of the Brexit referendum, members across political divides invoked the Belfast/Good Friday Agreement as the foundation of Northern Ireland's legitimacy.⁸⁶ Debates over the Northern Ireland Protocol and the Windsor Framework have similarly turned on competing interpretations of consent: for some, regulatory divergence from Great Britain undermines the constitutional settlement; for others, the arrangements remain consistent with the Agreement's objectives.⁸⁷ What emerges is not a single constitutional narrative but an ongoing negotiation of legitimacy within a divided polity.

Stormont's normative identity therefore differs from that of the other devolved legislatures. It is not grounded in an alternative theory of sovereignty nor primarily in civic policy commitments, but in a consociational settlement that embeds plural national identities within constitutional form.⁸⁸ Its legitimacy is relational and shared, sustained through the structured recognition of competing constitutional visions.

D. Analysis

Three insights emerge from these cases. First, normative identity is articulated across multiple sources: primary legislation, standing orders, linguistic regimes and foundational agreements. These are not merely

⁸⁴ Northern Ireland Act 1998, s. 1.

⁸⁵ Northern Ireland Act 1998, s. 42.

⁸⁶ N. Wallace, "Brexit Deal Survives Northern Ireland Assembly Vote after Heated Debate", *Euractiv*, available at <https://www.euractiv.com/section/politics/news/brexit-deal-survives-northern-ireland-assembly-vote-after-heated-debate/> (last accessed 18 March 2026).

⁸⁷ See C.R.G. Murray, "From Oven-Ready to Indigestible: The Protocol on Ireland/Northern Ireland" (2022) 73 *Northern Ireland Legal Quarterly* 8.

⁸⁸ McGarry and O'Leary, *Consociational Engagement*, ch. 4.

technical arrangements but vehicles through which constitutional authority is framed and justified.⁸⁹

Second, normative identity is inseparable from institutional design. Holyrood's deliberative aspirations, the Senedd's bilingual practice and Stormont's cross-community procedures each express underlying commitments – to democratic voice, cultural recognition or shared governance – that shape constitutional argument within their respective territories.

Third, normative identity becomes most visible in moments of constitutional disagreement. Referenda, legislative consent disputes and institutional suspensions have not displaced these identities but clarified the principles on which they rest. In each case, constitutional meaning is negotiated through political practice as well as legal doctrine.

These claims do not displace parliamentary sovereignty as a matter of law, but they complicate how authority is understood across the Union. The devolved legislatures articulate distinct justificatory bases for governance that coexist with, and sometimes challenge, Westminster's hierarchical authority.⁹⁰ It is in moments of conflict that these normative commitments are most explicitly asserted and where constitutional doctrine must confront the plural character of the territorial settlement.

V. CONFLICT IDENTITY: ASSERTION, RESISTANCE AND PERFORMANCE

Conflict identity captures the ways in which devolved legislatures assert constitutional distinctiveness through contestation with Westminster and other central authorities. In a territorially differentiated system such as the UK, disputes over competence, procedure and sovereignty are not aberrations but recurring features of constitutional practice.⁹¹

Within the UK's uncoded and asymmetrical settlement, these disputes often become sites of constitutional self-assertion. Legislative refusals of consent, judicial references, executive vetoes and institutional suspensions serve not only as political disagreements but as occasions on which devolved actors articulate their understanding of authority and autonomy.⁹² Conflict, therefore performs a dual function: it expresses sub-state constitutional claims and, at the same time, exposes the limits of existing mechanisms for mediating them.⁹³

⁸⁹ Popelier, Delledonne and Aroney (eds.), *Routledge Handbook of Subnational Constitutions*.

⁹⁰ See Walker, "Constitutional Pluralism"; Walker, "Beyond Unitary Conception".

⁹¹ *Ibid.*; Jacobsohn, *Constitutional Identity*, 47.

⁹² See e.g. M. Kumm, "The Cosmopolitan Turn in Constitutionalism: On the Relationship between Constitutionalism in and beyond the State" in J.L. Dunoff and J.P. Trachtman (eds.), *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge 2009); D. McCrone and M. Keating, "Exploring Sovereignty in Scotland" (2023) 94 *Political Quarterly* 26.

⁹³ A.L. Young, *Democratic Dialogue and the Constitution* (Oxford 2017), ch. 3; C. Mac Amhlaigh, "Back to a Sovereign Future? Constitutional Pluralism after Brexit" (2019) 21 *Cambridge Yearbook of European Legal Studies* 41.

A. Scotland

The Scottish Parliament's conflict identity has crystallised most sharply in the constitutional disputes surrounding Brexit. In response to the UK Government's EU (Withdrawal) Bill, Holyrood enacted the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill ("Continuity Bill") in 2018.⁹⁴ This legislation aimed to "freeze" EU law in devolved areas and to preserve policy autonomy after Brexit. Its very introduction was an act of constitutional assertion: it sought to legislate in a field in which the UK Government insisted that only Westminster could act, given the cross-border implications of EU withdrawal. The bill's reference to the Supreme Court under section 33 of the Scotland Act 1998 produced the seminal decision in *Re UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill*.⁹⁵

In its ruling, the court held that significant provisions of the bill fell outside competence because they were inconsistent with the subsequently enacted EU Withdrawal Act 2018.⁹⁶ The judgment confirmed that devolved legislation – even if valid when passed – may be retrospectively displaced by later Westminster enactments, revealing what scholars such as McHarg identify as a structural vulnerability inherent in asymmetrical devolution.⁹⁷ Politically, however, the dispute was framed in Edinburgh as an assertion of Scotland's right to protect its devolved competences against unilateral encroachment by the centre.⁹⁸

Crucially, Holyrood did not retreat from the field. Instead, it enacted the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, establishing new frameworks for environmental governance and oversight of retained EU law.⁹⁹ This recalibration embedded a self-understanding of Holyrood as a constitutional guardian, even when judicial outcomes constrained legislative ambition.

Legislative consent disputes further reinforced this conflict identity. The Scottish Parliament refused consent for multiple Brexit-related statutes, including the EU (Withdrawal Agreement) Act 2020 and the UKIMA

⁹⁴ Details about the progress of the bill are available at <https://www.parliament.scot/bills-and-laws/bills/s5/uk-withdrawal-from-the-european-union-legal-continuity-scotland-bill> (last accessed 19 March 2026).

⁹⁵ [2018] UKSC 64.

⁹⁶ Some of the key inconsistencies the court found within the European Union (Legal Continuity) (Scotland) Bill and thus deemed to amount to a modification of the EU Withdrawal Act 2018 were the retention of the EU Charter as law (clause 5), the preservation of the "Francovich principle" (clause 8(2)) and the need for Scottish Ministerial consent on UK Ministerial secondary legislation that applies to Scotland (clause 17).

⁹⁷ A. McHarg, "Brexit and Its Implications for Democratic Governance in the United Kingdom" in G. Patmore (ed.), *Research Handbook on Law and Democracy* (Cheltenham 2024); C. McCorkindale, A. McHarg and P.F. Scott, "The Courts, Devolution, and Constitutional Review" (2017) 36 *University of Queensland Law Journal* 289.

⁹⁸ See C. McCorkindale and A. McHarg, "Continuity and Confusion: Towards Clarity? The Supreme Court and the Scottish Continuity Bill", available at <https://ukconstitutionallaw.org/2018/12/20/chris-mccorkindale-and-aileen-mcharg-continuity-and-confusion-towards-clarity-the-supreme-court-and-the-scottish-continuity-bill/> (last accessed 19 March 2026).

⁹⁹ UK Withdrawal from the European Union (Continuity) (Scotland) Act 2020, Part 1.

2020.¹⁰⁰ Although these refusals had no legal effect, they carried symbolic constitutional weight. They enabled Holyrood to present itself as a co-equal constitutional actor, rather than a subordinate legislature, through the repeated withholding of consent.

Brexit disputes also revealed how conflict identity interacts with normative claims. By presenting itself as the voice of the Scottish people against Westminster's disregard, Holyrood drew upon its normative identity of popular sovereignty, thereby linking institutional action to constitutional principle.

The post-Brexit conflicts around rights-based legislation further demonstrate how conflict identity continues to evolve. Westminster's veto of the Gender Recognition Reform (Scotland) Bill under section 35 of the Scotland Act 1998 and the Supreme Court's ruling in *Re UNCRC (Incorporation) (Scotland) Bill* did not simply restate legal limits – they also prompted Holyrood to intensify its rhetorical and political claims to constitutional distinctiveness.¹⁰¹ These episodes revealed both the Scottish Parliament's willingness to contest the centre on normative grounds and the constitutional settlement's limits in mediating such disputes. They illustrate that conflict identity in Scotland is sustained not by a single constitutional flashpoint but by a cumulative pattern of friction across legislative, judicial and intergovernmental domains.

In sum, Scotland's conflict identity lies not in isolated episodes of disagreement but in a sustained pattern of legislative assertion, judicial contestation and political dissent. Each episode reaffirms Holyrood's self-conception as more than a subordinate legislature, even as the law reasserts Westminster's supremacy.

B. Wales

Welsh devolution was long characterised by accommodation rather than confrontation. The National Assembly began as a body with limited legislative powers and its political culture emphasised consensus and pragmatism.¹⁰² Brexit altered this dynamic. In defending its institutional autonomy during the post-Brexit transition, the Senedd adopted a more openly oppositional posture towards Westminster.¹⁰³

¹⁰⁰ Scottish Government, "Legislative Consent Memorandum: European Union (Withdrawal Agreement) Bill", available at <https://webarchive.nrscotland.gov.uk/20240327032513/https://archive2021.parliament.scot/parliamentarybusiness/Bills/113984.aspx> (last accessed 19 March 2026); and Scottish Parliament, "Legislative Consent Memorandum: Internal Market Bill", available at <https://webarchive.nrscotland.gov.uk/20240327032516/https://archive2021.parliament.scot/parliamentarybusiness/Bills/116127.aspx> (last accessed 17 March 2026).

¹⁰¹ *Petition of the Scottish Ministers* [2023] CSOH 89; *Re UNCRC (Incorporation) (Scotland) Bill* [2021] UKSC 42.

¹⁰² Government of Wales Act 1998, s. 1.

¹⁰³ See Rawlings, "Welsh Way".

The turning point came with the UK Internal Market Bill 2020 (UKIMB). The Welsh Government engaged extensively with the UK Government to develop common frameworks for post-Brexit regulatory divergence, consistent with its tradition of cooperative devolution.¹⁰⁴ However, when the bill was introduced, it became clear that it would impose market access principles (mutual recognition and non-discrimination) across the UK, significantly limiting devolved competence.¹⁰⁵ The Senedd's Legislative Consent Memorandum (No. 13) argued that the bill fundamentally undermines devolution, amounting to a unilateral re-centralisation of authority.¹⁰⁶ In December 2020, the Senedd withheld legislative consent – only the second time in its history that it had done so.¹⁰⁷ While legally ineffective, this refusal marked a visible assertion of constitutional disagreement.¹⁰⁸

The conflict was amplified by procedural and discursive innovations. The Senedd's Legislation, Justice and Constitution Committee scrutinised the UKIMB in detail, publishing reports that framed it not as a technical adjustment but as a constitutional threat to Welsh democracy.¹⁰⁹ These reports served to institutionalise dissent, transforming what might otherwise have been symbolic protest into a constitutional claim backed by parliamentary procedure. This procedural constitutionalism echoed scholars' accounts of Wales as a polity that often builds constitutional meaning through administrative and committee-based practice rather than through high constitutional rhetoric.¹¹⁰ It also signalled that Wales, like Scotland, would contest Westminster's authority, but through its own distinctive idiom: less through overt confrontation, more through the formal processes of scrutiny, constitutional reasoning and legislative technique.¹¹¹

The significance of this shift becomes clearer when situated within Wales's aforementioned broader constitutional trajectory.¹¹² Against this backdrop, the rejection of the UKIMA represented a departure from Wales's traditional role as the most pragmatic and least confrontational devolved legislature.¹¹³ By presenting itself as the defender of devolved

¹⁰⁴ See T. Horsley and J. Hunt, "Internal Market Governance by Consensus Rather than Conflict? Common Frameworks and the Potential for Positive Harmonisation" (2024) 75 Northern Ireland Law Quarterly 7.

¹⁰⁵ UK Internal Market Bill 2020, clauses 2–4.

¹⁰⁶ Senedd Cymru, "Legislative Consent Memorandum: UK Internal Market Bill", at [72].

¹⁰⁷ See Llywodraeth Cymru, "The UK Government's White Paper on A UK Internal Market: Welsh Government Analysis", available at <https://business.senedd.wales/documents/s103942/Correspondence%20from%20the%20Counsel%20General%2014%20August%202020.pdf> (last accessed 19 March 2026).

¹⁰⁸ See *R. (on the Application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2018] A.C. 61, at [151].

¹⁰⁹ Welsh Parliament Legislation, Justice and Constitution Committee, "UK Internal Market Bill".

¹¹⁰ C. Jeffery and D. Wincott, "Devolution in the United Kingdom: Statehood and Citizenship in Transition" (2006) 36 *Publius* 3.

¹¹¹ See *R. (on the Application of Counsel General for Wales) v Secretary of State for Business Energy and Industrial Strategy* [2021] EWHC 950 (Admin), [2021] A.C.D. 75.

¹¹² Rawlings, *Delineating Wales*.

¹¹³ R. Rawlings, "Wales and the United Kingdom: A Territorial Constitutional Policy Drive" (2022) 10 *Territory, Politics, Governance* 714.

“democratic space”, the Senedd acted not as a subordinate body but as one of several constitutional sites entitled to resist constitutional encroachment.

Comparative parallels reinforce the significance of this shift. In Quebec, constitutional crises such as the patriation debates of 1982 and subsequent referenda sharpened its identity as a constitutional dissenter.¹¹⁴ Similarly, the Senedd’s refusal of consent over the UKIMA 2020 does not signal a permanent move to confrontation but illustrates how even polities historically inclined towards accommodation can assert conflict identity when core competencies or constitutional principles appear endangered. Here, Welsh conflict identity emerges as both reactive and principled, rooted in the defence of territorial constitutional balance rather than in nationalist ambition.

Thus, conflict identity in Wales is distinctive. It is less about dramatic rupture, as in Scotland, or existential instability, as in Northern Ireland. Instead, it manifests as institutionalised resistance, expressed through committee reports, legislative dissent and carefully framed constitutional argumentation. This reflects Wales’s historical mixture of administrative inheritance and emerging political constitutionalism: conflict is integrated into existing practices rather than displacing them. In doing so, the Senedd demonstrates its evolving role as a pluralist constitutional actor – willing to defend devolved autonomy and democratic space even within a constitutional framework that ultimately affirms Westminster’s legal supremacy.¹¹⁵

C. Northern Ireland

Northern Ireland’s conflict identity has been most visibly performed through the constitutional crises surrounding Brexit and the Protocol on Ireland/Northern Ireland. As aforementioned, the Protocol introduced regulatory divergence between Northern Ireland and Great Britain, which unionist parties characterised as a constitutional rupture, while nationalist parties defended it as necessary to protect the all-island economy and the Belfast/Good Friday Agreement.¹¹⁶ These competing interpretations transformed the Northern Ireland Assembly into a site where constitutional identity is performed: plenary debates alternated between condemning the Protocol as an abandonment of the Union and defending it as essential to safeguarding the Belfast/Good Friday Agreement.¹¹⁷

¹¹⁴ A.-G. Gagnon and R. Iacovino, *Federalism, Citizenship and Quebec: Debating Multinationalism* (Toronto 2007), 88–91.

¹¹⁵ Keating, *State and Nation*.

¹¹⁶ See Murray, “Oven-Ready”.

¹¹⁷ E.g. the Northern Ireland Assembly voted 48:36 to continue special Brexit trading arrangements under the Windsor Framework, highlighting constitutional divisions and the “democratic deficit” perceived by unionists, see L. O’Carroll, “Northern Ireland Votes to Continue Brexit Arrangements for Another Four Years”, *The Guardian*, available at <https://www.theguardian.com/uk-news/2024/dec/10/northern-ireland-to-continue-to-retain-some-eu-trade-laws-post-brexit> (last accessed 24 March 2026); see also Phinnemore and Whitten, “Protocol/Windsor Framework”.

Conflict was not confined to rhetoric. In February 2022, the Democratic Unionist Party withdrew from the executive in protest against the Protocol, triggering an extended period without functioning devolved institutions. This episode made visible a structural feature of consociational orders: because the Agreement constitutionalises power-sharing, political disagreement does not simply produce legislative deadlock; it can generate institutional suspension. In Northern Ireland, the breakdown of cross-community consent converts constitutional conflict directly into governmental non-operation. The legal framework compounds this dynamic. Earlier case law had already underscored the limits of administration without ministers: in *Re Buick's Application for Judicial Review*, the High Court held that senior civil servants lacked authority to make significant policy decisions in the absence of ministerial direction.¹¹⁸ This ruling demonstrated that in Northern Ireland, unlike Scotland or Wales, constitutional conflict cannot be absorbed through administrative continuity; it immediately destabilises governance.

Litigation surrounding the Protocol crystallised these dynamics. In *Re Allister's Application for Judicial Review*, the UK Supreme Court dismissed challenges to the Protocol's lawfulness, holding that Parliament had validly modified aspects of the Acts of Union 1800 and the 1998 constitutional settlement and that constitutional statutes may be altered by clear later legislation.¹¹⁹ The decision reaffirmed orthodox parliamentary sovereignty even in the face of constitutional commitments embedded in the Belfast/Good Friday Agreement. Yet political conflict did not dissipate; it shifted into institutional forums, especially the Assembly's Article 18 democratic consent process, which requires periodic votes on the continued operation of core elements of the Protocol/Windsor Framework. This mechanism effectively hardwires constitutional conflict into Stormont's deliberative agenda.¹²⁰

The UK–EU Windsor Framework represented an attempt to stabilise these tensions by recalibrating customs and regulatory arrangements and by creating mechanisms such as the Stormont Brake, intended to increase democratic oversight.¹²¹ Nonetheless, Assembly debates revealed persistent division over whether the Windsor Framework rectified or merely relabelled the perceived constitutional harms associated with the Ireland/Northern Ireland Protocol.¹²² Analysts such as Tonge and Hayward note that these disputes reflect not only policy disagreement but

¹¹⁸ [2018] NIQB 43, at [57]–[65] (McCloskey J.).

¹¹⁹ [2023] UKSC 5, [2024] A.C. 1113, at [82]–[108] (Lord Stephens).

¹²⁰ Protocol on Ireland/Northern Ireland, art. 18.

¹²¹ HM Government, *The Windsor Framework: A New Way Forward*, CP 811 (London 2023).

¹²² G. Cowie, "Windsor Framework: Democratic Oversight and the Independent Review", available at <https://researchbriefings.files.parliament.uk/documents/CBP-10287/CBP-10287.pdf> (last accessed 19 March 2026); N.I. Assembly Official Report of 17 November 2025, vol. 184, No. 3, 14–23.

deep misalignment between competing constitutional imaginaries within Northern Ireland.¹²³

Two analytical points follow. First, Northern Ireland's conflict identity is structurally institutionalised. It is enacted through formal mechanisms – cross-community consent requirements, petitions of concern – and through the ever-present possibility of institutional collapse. These are not merely political choices; they constitute a constitutional grammar that translates identity conflict into governmental form.¹²⁴ Second, litigation has clarified but not resolved the tension between hierarchy and pluralism within the UK constitution. *Re Allister* reasserts Westminster's legal supremacy, yet the democratic consent mechanism, recurrent suspensions of the executive and continued division over the Windsor Framework ensure that constitutional meaning is continually renegotiated within Stormont's consociational architecture.

D. Analysis

Three observations follow from the preceding discussion. First, the conflict identities of Scotland, Wales and Northern Ireland reveal both the shared and divergent patterns of constitutional dissent within the Union. In Scotland, conflict is enacted through legislative innovation and symbolic refusal of consent, grounded in a normative claim to popular sovereignty. In Wales, conflict is more procedural and committee-driven, reflecting a transition from administrative devolution to a more assertive constitutional posture. In Northern Ireland, conflict is existential and structurally embedded, shaped by a consociational order in which constitutional disagreement can produce institutional paralysis. These trajectories mirror analogous dynamics in other multilevel systems, such as Catalonia's recurrent confrontations with Madrid¹²⁵ and Quebec's iterative assertions of autonomy.¹²⁶

Second, conflict functions as a mechanism of boundary clarification. Judicial references, legislative consent disputes, executive vetoes and institutional withdrawals each delineate the practical limits of devolved authority while simultaneously providing occasions for devolved institutions to articulate constitutional claims. These episodes do not dissolve disagreement but structure it within recognisable legal and political forms.

Third, the intensity and consequences of conflict vary according to institutional design. In Scotland and Wales, disagreement can be

¹²³ J. Tonge, "Beyond Unionism versus Nationalism: The Rise of the Alliance Party of Northern Ireland" (2020) 91 *Political Quarterly* 461; K. Hayward, "Will the Windsor Framework Work?", *Fortnight*, available at <https://fortnightmagazine.org/articles/will-the-windsor-framework-work/> (last accessed 19 March 2026).

¹²⁴ See Heenan and Birrell, "Exploring Responses".

¹²⁵ See Ubillos, "Spain as a Democratic State"; G.G. Carranza, "Subnational Constitutionalism in Spain: Confluence of Wills in a Basic Institutional Norm" in Popelier, Delledonne and Aroney (eds.), *Routledge Handbook of Subnational Constitutions*.

¹²⁶ See Russell, *Constitutional Odyssey*.

sustained within functioning legislative systems; in Northern Ireland, constitutional dispute may disrupt institutional operation itself. The territorial constitution thus distributes not only powers but different modes of contestation.

Conflict identity therefore reveals a differentiated but patterned landscape of constitutional dissent within the Union. It demonstrates how devolved legislatures operate as constitutional actors not only through the policies they enact, but through the forms of disagreement they institutionalise and the claims to authority they articulate in opposition.

VI. CONCLUSION: IMPLICATIONS FOR THE UK'S PLURAL CONSTITUTION

The analysis undertaken in this article demonstrates that the UK's territorial constitution can no longer be described adequately through the binary of unitary state and federal system. The formal architecture remains grounded in parliamentary sovereignty and the courts have consistently reaffirmed that devolved legislatures derive their authority from Westminster. Yet the practical operation of the constitution now reflects a more complex distribution of constitutional meaning across multiple institutional sites. Legal hierarchy persists, but it coexists with territorially embedded claims to authority that are articulated through legislative practice, normative commitment and structured contestation.

This development exposes a widening gap between doctrinal orthodoxy and constitutional practice. In *R. (Miller) v Secretary of State for Exiting the European Union*, the Supreme Court reaffirmed that the Sewel Convention is not legally enforceable, preserving the orthodox account of parliamentary sovereignty. Similarly, *Re UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* confirmed that devolved legislation remains subject to displacement by later Westminster enactments. These decisions entrench the formal supremacy of the UK Parliament. However, they do not exhaust the constitutional reality revealed by the preceding analysis. Across Scotland, Wales and Northern Ireland, devolved institutions articulate territorially grounded conceptions of legitimacy that shape political expectations and constitutional behaviour, even where legal limits are clear.

The result is a constitutional order characterised by differentiated but structured pluralism. As Walker has observed, the post-devolution settlement has generated a "sovereignty surplus" in which constitutional authority is articulated in more than one institutional location.¹²⁷ Authority is not equally distributed, nor is it legally coordinate; nevertheless, devolved legislatures function as constitutional actors

¹²⁷ N. Walker, "The Sovereignty Surplus" (2020) 18 International Journal of Constitutional Law 370.

whose claims cannot be reduced to administrative delegation. The persistence of legislative consent disputes, executive vetoes, judicial references and institutional suspension indicates that constitutional disagreement has become routinised within the territorial order.

This condition places increasing weight on political mechanisms of accommodation. Griffith's classic account of the political constitution emphasised that constitutional authority in the UK is sustained through political practice rather than entrenched legal constraint.¹²⁸ That insight remains salient. Yet the post-Brexit period has demonstrated the strain placed upon political conventions in a context of intensified territorial divergence. Conventions, such as Sewel Convention, depend upon mutual restraint and shared understandings; where those understandings weaken, legal hierarchy alone cannot secure constitutional stability.

Comparative federal systems illustrate the importance of institutionalised channels for managing territorial disagreement. Canada's experience with Quebec demonstrates how sustained negotiation, judicial arbitration and structured intergovernmental forums can stabilise plural constitutional claims without dissolving the state.¹²⁹ By contrast, systems that lack clear frameworks for mediation risk converting recurring constitutional disagreement into systemic distrust. The UK's asymmetrical and largely uncodified arrangements provide flexibility, but they also render the settlement vulnerable to repeated cycles of unilateral action and reactive resistance.

The central implication is therefore institutional rather than doctrinal. Parliamentary sovereignty remains intact as a matter of law, but the sustainability of the Union increasingly depends upon mechanisms capable of mediating territorially differentiated claims to legitimacy. Strengthened intergovernmental procedures, clearer frameworks for consent and more robust forms of political accountability may prove more significant for constitutional durability than further judicial elaboration of sovereignty's boundaries.

The UK now operates as a differentiated constitutional system in which authority is legally centralised yet politically dispersed across multiple constitutional sites. Recognising and structuring this plural reality is essential to preserving the coherence of the territorial constitution. The question is no longer whether parliamentary sovereignty survives devolution; it is whether the institutional architecture of the Union can evolve sufficiently to accommodate the constitutional identities it has itself generated.

¹²⁸ J.A.G. Griffith, "The Political Constitution" (1979) 42 M.L.R. 1. See also A. Tomkins, "In Defence of the Political Constitution" (2002) 22 O.J.L.S. 157.

¹²⁹ Russell, *Constitutional Odyssey*.