

Unionism in the Courts? A Critique of the Act of Union Bill

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The “Act of Union” Bill stands out among proposals designed to reform and, ultimately, save the UK’s Union of nations and jurisdictions. Taking the form of draft framework legislation, it offers a blueprint for how UK-wide constitutional change might be instigated. In doing so, the Bill provides a useful thought experiment in constitutional design: it allows us to consider how a distinct set of reforms to the Union might interact with recent legal and political developments. This paper offers a critique of clause 2 of the Bill, which envisions new roles for the courts in respect of a constitutionally novel set of “core purposes” of the UK state. While analogous legislation and case law suggest that a limited role is intended for the courts, we argue that clause 2 would pose significant constitutional dilemmas. Involving the courts in a contested vision of the Union and its aims could risk jeopardising the political confidence in judicial independence which is required for the effective resolution of intergovernmental disputes. Further, the ambiguous constitutional character of the Bill, which seeks to reflect traditions of both popular and parliamentary sovereignties, could facilitate a more assertive constitutional role for the courts in their approach to a clause 2-type provision. This would risk further politicisation of the judicial role.