

Views on the constitution from across the UK

Lessons from a series of roundtables

Summary

Between October 2022 and February 2023, the Institute for Government and the Bennett Institute for Public Policy hosted four roundtables across the UK on the constitution as part of our review of the UK constitution. Participants at these roundtables included academics, current and former civil servants, journalists, former politicians and members of the private sector, who came together to discuss issues of governance, the constitution and Westminster's relationship with the rest of the UK.

We are grateful to our generous partners who hosted these discussions and offered their invaluable expertise and insight in the planning and organisation of them. At the first roundtable, held in October 2022 in partnership with the Senator George J. Mitchell Institute for Global Peace at Queen's University Belfast, participants discussed the acute challenges of delivering good government in Northern Ireland in the context of the suspension of the executive.

The second roundtable, held in Edinburgh in November 2022 in partnership with the Royal Society of Edinburgh, asked how well the Westminster system and the constitution work for Scotland.

The third, held at Newcastle University in November 2022 with the Centre for Urban and Regional Development Studies, examined England's governance structures, with a particular focus on the north of England.

The final roundtable was held in Cardiff in February 2023 with Cardiff University's Wales Governance Centre and asked how well the UK constitution works for Wales.

This document identifies the most important insights from these roundtables, which have informed the recommendations of the recent *Devolving English Government* report and will feed into the forthcoming final report of our review of the UK constitution.

Devolution and the constitution

Devolution feels under threat in Scotland and Wales

Across the roundtables there was a sense that the UK government has taken a different approach from the devolved nations since 2016. Both the Scottish and Welsh governments feel that there is less respect from the UK government for devolution. This was evidenced by the increased disregard for the Sewel Convention, especially on legislation passed during the process of exiting the EU. The UK Internal Market Act 2020 was cited as an example across all the roundtables in the devolved nations.

Devolution lacks strong constitutional protections

Across the roundtables there was agreement that UK parliamentary sovereignty and the political rather than legal enforcement of constitutional legislation left devolution without strong protections. The UK parliament retains the power to override, or even theoretically reverse, devolution. This leaves the devolved institutions vulnerable to the whims of the UK government with a majority in the House of Commons.

Some participants argued that the only leverage that the devolved nations could theoretically hold against the UK government is the threat of exiting the union, but the Scotland Act 1998 and the Wales Act 1998 provide no legal route for exit. That said, devolution arrangements have been adapted and expanded since devolution was introduced in 1999, so there has been space for negotiation and manoeuvre by devolved governments.

This highlights a broader problem in the UK constitution. Constitutional changes, including those intended to address problems with the functioning of the constitution, can be made and reversed by a simple majority. For example, the Fixed-term Parliaments Act 2011 was a constitutional change introduced and then removed within a decade, with the same party in government.

There are protections for devolution outside of codification

Participants did note that there are political and legal safeguards for devolution. The political cost of removing devolution entirely would likely be enormous, and the existence of devolved governments and parliaments is almost certain to remain a feature of the UK constitution in the future.

Norms and conventions also govern the relationship between the four parts of the UK. For example, the Sewel Convention, which states that the UK parliament will “not normally” legislate on devolved matters without the consent of the devolved legislature, had historically provided a level of protection for devolution. However, the good functioning of these conventions relies on a willingness to abide by them and this has declined in recent years.

Relationships between the centre of government, the UK nations and the regions

Devolution is reliant on relationships as well as structures

Participants agreed that relationships between devolved institutions and the UK government play a major role in how well devolution works. Some pointed to periods where specific UK ministers and their special advisers made intergovernmental and other relationships work better or worse depending on their approach, level of interest or personality. Across the UK, devolved institutions are reliant on working well with ministers, civil servants and government departments to get what they need. In England, where the devolution of powers has taken place more recently than in Scotland, Wales and Northern Ireland, this is more acute, and outcomes are often reliant on deal making between individual mayoral combined authorities and UK government departments, rather than a system for all devolved areas of England.

There is a lack of understanding and consideration of the nations and regions at the centre of government

Across all four roundtables, there was a sense that there is a lack of understanding in Westminster and Whitehall of devolution and the devolved nations and regions. Participants noted that this is in part due to high turnover of civil servants in Whitehall, making it more difficult to build relationships and develop a deep understanding of devolution. Some panellists suggested the use of secondments between civil servants at the centre of government and devolved areas could help to foster greater mutual understanding.

Several participants also stated that the structures of intergovernmental relations (IGR) were poorly and sporadically implemented in the past. However, there was some hope that the new structures following the IGR review in 2022 could help to facilitate better communication and understanding.

Others felt that a lack of political will from UK ministers to engage with their devolved counterparts remained a barrier to better co-operation. The failure of the UK government to acknowledge when it was acting for the whole of the UK and when just for England in devolved areas, also made it difficult for the four governments of the UK to engage on equal terms.

There are opportunities for learning between devolved areas

The UK currently has multiple forms of devolved government, all of which reflect different approaches to governance, the civil service and public services. There are opportunities for different parts of the UK to learn from one another more, to provide better outcomes for citizens. This could be between Northern Ireland, Wales and Scotland, or between different devolved regions of England.

How can solutions be found?

Devolution has different meanings across the UK

Across the roundtables, panellists noted the specific local contexts of devolution, which shape both how the relevant arrangements are understood and wider debates about constitutional reform. In Northern Ireland, devolution is tied to the Good Friday Agreement and its unique power-sharing arrangements; any changes will require the agreement of all the political parties. In Scotland, the process of devolution and questions on its future are centred on the issue of independence, and how and if Scotland could have the opportunity to vote on this again. In Wales, there is strong support for devolution and a desire in the Senedd for a stronger working model of devolution within the union. Within England itself there is a great deal of variation in the devolution deals that areas have, and there are areas that have rejected the option of a deal entirely.

The approach to devolution needs to be tailored to each part of the UK

There are many common issues with devolution across the UK, and therefore in some areas, common solutions. For example, there was agreement at all four roundtables that the functioning of devolution would benefit from improved relationships between the different governments across the UK and mayors across England.

But the varied nature of devolution itself means that solutions need to be tailored to specific nations and regions. A singular approach from the centre of government towards 'devolution' may overlook the specific needs of nations, regions and communities in different parts of the UK. This might include an approach to IGR that would allow individual nations to express their specific governance needs. Participants in Northern Ireland noted that greater engagement from the UK outside of points of crisis would be useful, whereas panellists in Scotland felt that the UK government was already too involved in Scottish government.

More effective and stable arrangements for England, Scotland, Wales and Northern Ireland will require better communication and engagement from Westminster and Whitehall in order to be able to tailor approaches to the specific needs of specific places.

Constitutional changes in one part of the UK have implications for the other parts

Changes made to the devolution settlement do not happen in a vacuum, however, and developments in some parts of the UK can have a major impact on others. This needs to be factored into any attempts to change the current devolution arrangements. For example, panellists at the Newcastle roundtable noted that different combined authorities in England look to one another on devolution. This means that their demands and desires will change based on developments elsewhere in England.

Similarly, participants at the Welsh roundtable noted the major impact that developments in Scotland have had on Welsh devolution, starting with the 1997 referendums held before the introduction of devolution. This means that while the best arrangements will vary according to the needs of certain areas, they will also need to consider the impacts they might have across the rest of the UK.

The future of English devolution also has a major bearing on devolution across the UK. Both Welsh and Scottish participants noted that for a solution for devolved representation at the centre of government to work, the English question needed to be resolved. As England is so much larger than the other UK nations, it dominates UK politics, and increasing devolved powers without resolving the issue of English representation is very difficult.

Options for exiting the union are also co-dependent. Currently, only Northern Ireland has a constitutional mechanism for leaving the union. If the secretary of state for Northern Ireland decides that there is a majority support for leaving the union, they are required to call a border poll. The Scottish government has in recent years been pushing for a mechanism to unilaterally call a referendum, although this remains unlikely. This would have a bearing on Wales, whose government would likely want the same powers as Scotland. There are also concerns about different parts of the UK having different constitutional arrangements for exiting the union.