



# How well does the UK constitution work for Wales?

## *Summary of a private roundtable*

### Introduction

This roundtable, co-hosted by Cardiff University's Wales Governance Centre, the Bennett Institute for Public Policy at the University of Cambridge and the Institute for Government, brought together key experts from the third sector, academia and the civil service to discuss how well the UK constitution works for Wales. The discussion will inform the work of the **Institute for Government / Bennett Review of the UK Constitution**, which is exploring ideas about governance and constitutional reform in all parts of the UK.

### Background

Wales faces several questions on its constitutional future. The Independent Commission on the Constitutional Future of Wales, established by the Welsh government, has argued that the current 'status quo' of devolution is no longer viable. Instead, it envisions three possible paths for Wales: strengthened and secured devolution; a new federal approach for the UK; and Welsh independence.

The UK's central constitutional principle of parliamentary sovereignty means that there is little constitutional protection for devolution; the devolution statutes themselves could be repealed by a simple majority. While political constraints mean that this is unlikely, the UK government has shown an increased willingness to push the boundaries of the norms and conventions that govern the devolution settlement.

This discussion sought to focus on these and other questions of governance and public policy. The following three questions were discussed:

- Are the UK's arrangements for intergovernmental relations fit for purpose?
- Is devolution adequately protected in the UK constitution?
- How can the UK constitution work better for Wales?

## Are the UK's arrangements for intergovernmental relations fit for purpose?

### *Intergovernmental relations require regularity and structure to work well*

Participants noted that before the intergovernmental relations (IGR) review in 2022, IGR meetings were often poorly organised and ineffective. Joint Ministerial Committee (JMC) meetings – the formal mechanism for IGR – were not regular, they were announced at the last minute and the UK government did not always share enough information.

The group expressed a need for greater regularity of intergovernmental meetings and more structure in the meetings themselves. The Joint Ministerial Council on Europe (JMC(E)) was given as an example of good working, largely because the external timetable of European Council meetings ensured regular JMC(E) meetings and a joint approach from the devolved and UK governments also meant that there was regularity. Participants noted that, in theory, the new model of IGR was an improvement on the original model of JMCs. There was some hope that this would be translated into an improvement in IGR in practice.

More regularity would help to develop relationships between Whitehall and the devolved administrations and allow for conversations on difficult topics to begin at an earlier stage, rather than having IGR meetings when a problem has already arisen.

### *There is no consensus between the governments of the UK on the purpose of IGR*

Participants noted that across the UK, different actors viewed the purpose of IGR differently. The Scottish government would, at times, use meetings to show that it had made its point to the UK government. The desires of the first and deputy first ministers in Northern Ireland would vary. Some UK ministers would use IGR structures to find agreement, while others would treat it as a box-ticking exercise. Finally, the Welsh government would see it as a way to find agreement or start a dialogue.

### *Stronger relationships would strengthen IGR*

In the past, the efficacy of IGR and different JMCs has varied based on individual personalities. This includes ministers but also their special advisers. Participants noted the need for stronger relationships between politicians and officials across the UK.

One of the issues with relationship formation is that officials, advisers and ministers in the UK government are subject to much higher turnover than in the devolved administrations. This can make forming long-term working relationships much harder.

### *Good IGR will require a change in mindset as well as structure*

Attendees discussed the balance between the structures for good relations, and a culture of co-operation. There was some debate as to whether good structures were needed to breed a culture of co-operation, or whether those structures would grow out of a cultural shift. Regardless of how robust structures for IGR are, if governments do not want to use them for co-operation, then IGR will not work. That said, there was consensus among the participants that working towards a more co-operative agenda and meeting cycle would help foster a better culture.

## Is devolution adequately protected in the UK constitution?

### *There are protections for devolution, just not legally enforceable ones*

There are elements of the constitution that do protect devolution. For example, the Sewel Convention has worked well in the past in creating incentives for the four governments of the UK to reach agreement on legislation. But the convention is not legally enforceable, and relies on political enforcement and a willingness of the UK government to be bound by it.

UK parliamentary sovereignty means that the devolution statutes are vulnerable to change. But reversing devolution or undermining the devolved institutions would carry high political risk, which provides some level of protection. Some participants suggested that more constraints could be put in law. They also noted that parliamentary sovereignty was not absolute and there are examples, including EU membership and the Human Rights Act, where legal constraints have been put on parliament and the UK government. Others suggested that a reformed second chamber could play a role in protecting devolution, as proposed by the Brown Commission.

However, currently, a lack of shared understanding of the principles that should underpin devolution between the different governments of the UK has made it difficult to protect.

### *Leaving the EU has changed the landscape for devolution*

Participants discussed the multiple ways in which Brexit had changed the constitution that devolution was built on. A series of disagreements over the powers returning from the EU highlighted the fact that where there were disagreements over devolved powers, the UK government could enforce its will, through bills like the United Kingdom Internal Market Bill, despite the Sewel Convention.

Participants noted that the Senedd refusing consent on Westminster bills used to be a rare occurrence, but during the sixth Senedd there have been 69 legislative consent motions across 31 UK bills on 263 clauses. This is not just a case of Brexit directly causing these issues, but that in facing the task of exiting the EU, the UK government chose to increasingly disregard the devolved administrations.

### *Reliance on the Sewel Convention leaves devolution vulnerable*

Some participants pointed to the Sewel Convention as a weakness for devolution. They questioned whether a convention, based on a statement by Lord Sewell in parliament in 1998, was an adequate mechanism for regulating devolution. Even when the convention is observed, it does not apply to secondary legislation, so executive spending decisions in devolved areas can happen without even a legislative consent motion.

Another problem is that the convention relies on good-faith actors in the UK government who respect the arrangements for devolution. Participants discussed that a reliance on good faith is not a sustainable way for devolution to operate, and that such conventions should be designed to work under any circumstances.

### ***UK institutions have failed to adapt to devolution***

When devolution took place, the process of constitutional change was inadequate. The focus was on creating arrangements for devolved government in Scotland, Wales and Northern Ireland, rather than considering what changes might be needed at the centre of government. Pre-devolution, officials in the territorial offices and policy departments were part of the same government; devolution changed this, so intra-UK co-operation on policy has become more challenging.

The Covid pandemic shone a light on the lack of understanding of devolution in Westminster, Whitehall and the general population, as people were surprised that the Welsh government could take different decisions from the UK government. The dominance of the UK media in Wales exacerbated this. But Covid did help to increase awareness of the different governments in each part of the UK.

## **How can the UK constitution work better for Wales?**

### ***A federalist future for the UK would have to resolve the question of England***

Imbalances of population within the UK would create an unbalanced federal structure. In comparison with other federal nations like the US and Germany, the UK is dominated by England. For federalism to function in the UK, England would need to be regionalised, but the panellists suggested that there was little appetite for this within England.

There was some discussion about the issue of English regional identity. Some noted that English regionalism was growing, and others suggested that forming regional units within England could create a stronger sense of identity.

### ***Federalism would require major changes in UK structures***

A federal model for the UK would likely require much more codification of the UK constitution and, as some panellists pointed out, greater involvement for the courts in regulating federal structures. It would also require a change in the powers of the current devolved governments, including an expansion of the Welsh government's powers, for example to include justice and policing. The joint England and Wales legal jurisdiction could not continue in its present form.

### ***Welsh independence lacks a clear model***

The movement for Welsh independence is not as developed as that in Scotland. Panellists noted that there has been some sectoral thinking on independence, such as the work of Plaid Cymru's Commission on Independence. But there is no worked-out proposal for an independent Wales. That said, some participants noted that there is no single agreed model for Scottish independence either.

### ***Nations of the UK lack a mechanism for independence***

Participants noted that there is currently no democratic process for Scotland and Wales to leave the union, even if the population wants to. If the UK is a voluntary union, then there needs to be a process to exit. The panel discussed what such a mechanism would look like. They pointed to the Northern Ireland model, where the secretary of state can decide to call a border poll. This would not be an ideal system for Wales and Scotland, but the attendees noted it may be hard to have distinct systems in place for different nations of the UK.

### ***Wales's position within the union is unique***

Wales's position in the union differs from that of both Scotland and Northern Ireland. Panellists noted that the Welsh government has argued for more robust and developed devolution within the existing union and more protection for devolution. While Scotland has recently leaned more towards 'in' versus 'out' debates, and the UK government has been more reticent to expand devolution, Wales has had a more pragmatic approach.

Participants also discussed the impact of Scotland on Wales. The fact that the devolution referendum was held a week earlier in Scotland had a major impact on the outcome in Wales. If Scotland were to leave the union, it would drastically alter Wales's position, and Wales would be forced to reckon with the question of independence more seriously.

Some participants noted that discussions on devolution in Wales were often shaped by developments elsewhere in the UK, and that perhaps Wales would benefit from a discussion more focused on what is right for Wales itself.



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