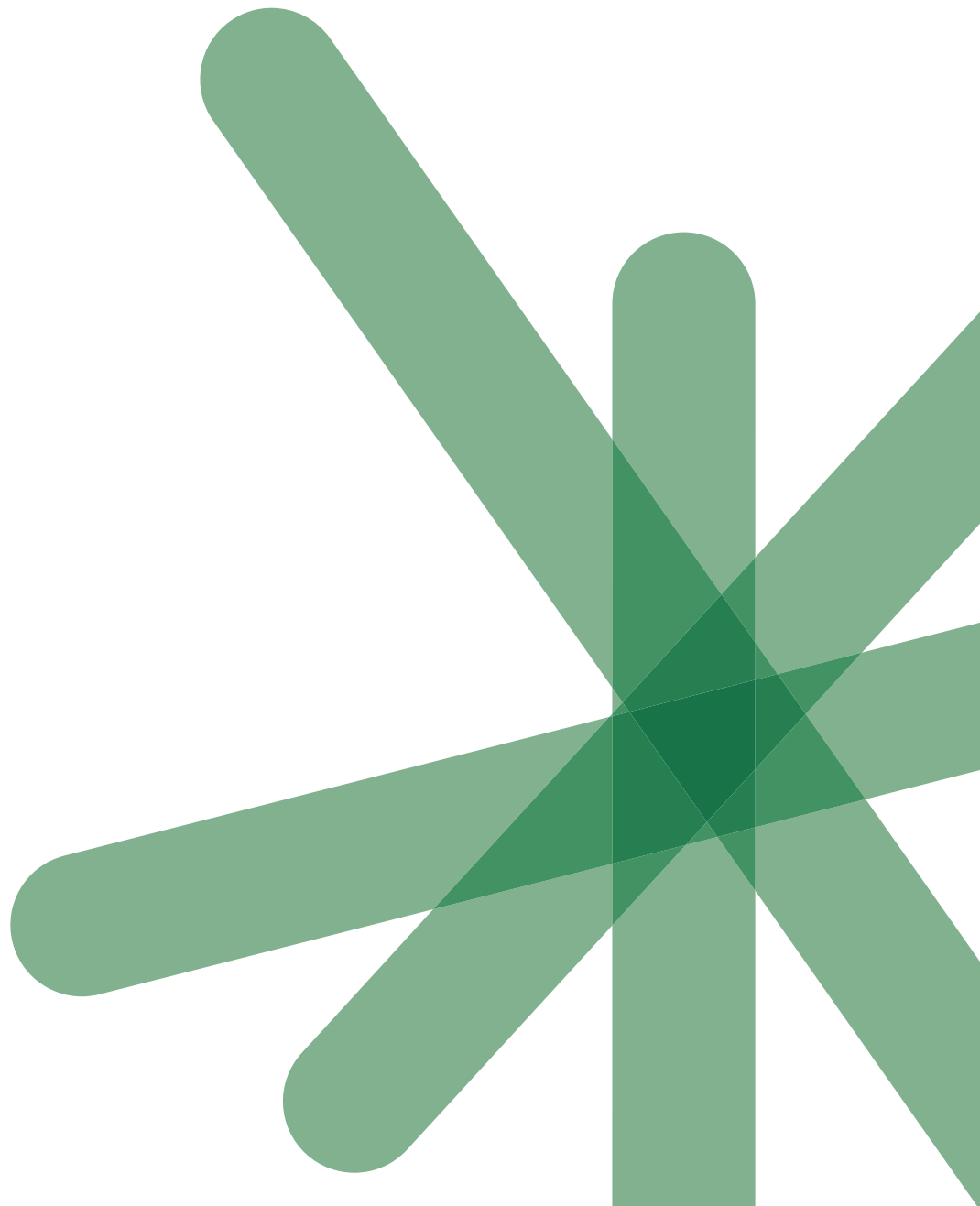
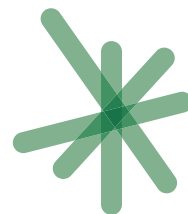

The UK's Changing Union

Towards a new Union

February 2015

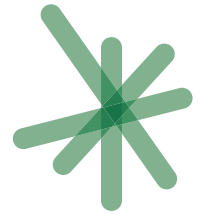




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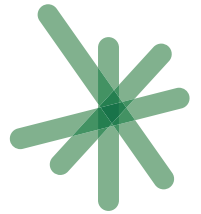
The UK's Changing Union Towards a new Union

The UK's Changing Union has been a research project conducted by a partnership of Cardiff University's Wales Governance Centre, the Institute of Welsh Affairs and Cymru Yfory / Tomorrow's Wales. The project was funded by the Joseph Rowntree Charitable Foundation and the Nuffield Foundation.

After three years of intensive analysis and discussion that has ranged across all four countries of the UK, as well as presenting extensive evidence to the Commission on Devolution in Wales (the Silk Commission), we present the following reflections with the objective of ensuring that, in the wake of the Scottish referendum, Wales is genuinely at the heart of the debate on the future of the union.

Since the constitutional debate continues to be a live and moving process, rather than firm recommendations we set out a range of issues that we believe should be central to the continuing deliberations on this subject. We have drawn not only on the evidence we have presented but also on the reflections of others during six forums organised by the project.

1



The reform and renegotiation of the Union

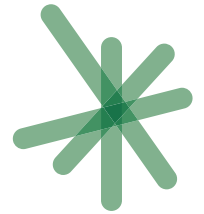
The partners embarked on this project in an attempt to bridge the divides that we thought existed between the constitutional debates in the different countries of the Union. These debates have been fragmented and as asymmetric as the Union itself. The recent referendum in Scotland has also brought the UK very close to a radical dismemberment. The Changing Union project has had extensive contributions from Scotland, Northern Ireland and Wales, less so from England. This has reflected the fact that constitutional debate in England has hitherto been less well developed.

The continuing fragmentation of negotiations about the future of the Union is inimical to the Union itself and harmful to the position and interests of Wales within it. It is a point that has been argued effectively by Wales's First Minister, Carwyn Jones, in his calls for the setting up of a UK-wide Constitutional Convention. A properly functioning Union should have been able to give his proposal the serious and formal consideration it deserved.

It is of concern that even now, after the Scottish referendum, there is a danger that constitutional issues affecting the whole of the Union will be considered in a series of bilateral agreements that may not provide the basis for a coherent and stable reform of the Union as a whole. Ensuring that Wales is at the heart of the debate is, therefore, not just a matter of defending the Welsh interest, but also of giving a clear public signal that the Union is being considered as an all-embracing working system rather than a series of disconnected 'concessions'. Put another way, the reform and renewal of the Union entails more than devolving power, it must also address the form and functions of our central institutions as well as the character and purposes of the Union itself.

Many now argue for a new, written constitutional settlement to lay the foundations for the renewal of democratic engagement amongst all the citizens of the United Kingdom. But what form should that settlement take? How should it recognise and frame a shared commitment to meet the aspirations of all four constituent nations of the Union in the common interest of the Union as a whole? And by what process should we arrive at an answer that can be acceptable to all?

2



The post-election process

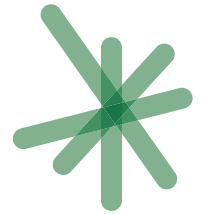
Following the Scottish referendum, the UK Government established the Smith Commission to negotiate an agreement on Scotland and a Cabinet Committee 'for devolved powers', chaired by the Leader of the House of Commons, William Hague. The Secretary of State for Wales has also initiated talks "to seek a cross party consensus on a stable, long term settlement for Wales" and has made a commitment to table proposals by St David's Day on 1st March 2015.

There is widespread concern that these processes, while valuable in themselves, fall short of what is necessary. Neither the remit of the Cabinet Committee nor the Smith Commission's proposals for strengthening inter-governmental relations go beyond the specific devolution issue. Despite the Government's publication of a Command paper setting out options for England, there is no process for addressing the English question that commands the support of all parties. Moreover, current discussions are all taking place on the threshold of a UK General Election, and consensus – or lack of it – may be dictated by that unhelpful context and the inevitable political manoeuvring.

It is certain, therefore, that it will be necessary to create a space for post-election consideration of these issues, albeit within a sensibly limited timescale. The current UK Government seems to want to confine this to discussion among the political parties. The First Minister of Wales, Carwyn Jones, on the other hand, has long argued for a UK Constitutional Convention, and is now supported in that by the Labour party centrally, and by the Liberal Democrats. However, the form of such a convention is not clear.

If this is to be the way forward, there are obvious issues to be faced: foremost, the need to ensure that any convention's membership, remit and timetable is subject to cross-party agreement involving both the UK Government and the territorial governments. As to membership, a 'convention' could be composed of elected members drawn from the four UK legislatures, but in the current climate many will think that to be, on its own, too narrow a base. Having had access to much research about public attitudes to politics in general and to constitutional issues in particular, we believe there is a powerful case for ensuring that the membership of any convention or alternative mechanism should go beyond the existing parties and embrace a cross-section of civil society. Its remit and timetable would also have to be such as to prevent it becoming a means of delay. March 2016 would seem a reasonable target date for reporting to the UK and territorial governments.

3



A bedrock of principle

Whatever process is decided upon, at the core of the debate must be the question of the values and purposes of the Union itself. The constitutional agenda can become overlong, but a bedrock of principle must be laid down at the outset. The process of defining core principles is something to which politicians, poets, philosophers and historians might wish to contribute but, at this stage, rather than leave this notion as an abstraction we have set out four possible principles as a starting point.

A union state not a unitary state

- i) That the United Kingdom state consists of four national entities – England, Scotland, Wales and Northern Ireland - sharing sovereignty, expressing themselves democratically through Parliaments and Assemblies whose continued existence are henceforth guaranteed, and freely assenting to cooperate in a Union for their common good. This signals the end of “devolution” to Scotland, Wales and Northern Ireland and a move to a more overtly federal or quasi-federal framework. This recognition of the four-nation state would also explicitly demonstrate respect for the rich cultural diversity in the Union.

Subsidiarity, consistency and clarity

- ii) That in the distribution of functions between the tiers of government – across the full range from European to local - the principle of subsidiarity be applied. In applying this principle it is vital that consistency and clarity be secured throughout the Union, taking fully into account, as appropriate, differences in their respective governance and internal circumstances. The application of this principle need not, therefore, imply uniformity. Moreover, this principle of subsidiarity should apply not only with respect to the four nations at national levels, but should be also extended to local government within each nation as appropriate.

A shared solidarity

- iii) That the four countries of the Union severally and together commit to the principle of shared solidarity, collaborating for the common good and for economic and social cohesion across the UK as whole.

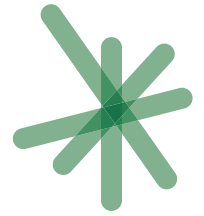
Tempering the UK's asymmetry

- iv) That the parties to the Union acknowledge the dominant role of England within it and that England has its needs and rights, but that England also acknowledges that the asymmetry between it and the other nations is of such a scale as to require tempering, in the interests of fairness, by the introduction of a range of institutional mechanisms.

It would seem to us that any process, convention or otherwise, should have to include in its agenda the following key issues:

- The definition of the key purposes and character of the Union fit for its role in Europe and the world.
- The definition of the core powers reserved to the UK Government, with possible variations to take into account the circumstances of the constituent nations.
- The clarification of the core UK-wide entitlements of UK citizens (e.g free primary and secondary education, health service free at the point of need, state pensions, human rights etc.);
- The budgetary principles governing central and territorial taxation and borrowing powers ;
- Mechanisms to ensure the fair and consistent functioning of the Union. This is a contentious area, but, by way of example they, would include
 - Means of strengthening the inter-governmental relations between the different legislatures (Joint Ministerial Committees, Memoranda of Understanding, Statutory Codes of Practice);
 - An independent UK-wide system for assessing (determining) the fair distribution and redistribution of financial resources on a clear statutory basis, limiting UK Treasury and ministerial discretion, designed to be equitable between all parties on the basis of examination of needs and with no expectation that transfers would be continued when needs had been met satisfactorily ;
 - A system for the resolution of disputes between governments and/or legislatures; and
 - The role and composition of a Second Chamber for the Union state, reflecting the nations and regions of the UK
- The role of England in an asymmetric Union, taking into account whatever is decided upon as regards the internal governance of England.

4



Wales

Over the past 15 years there has been intense study of the governance and financing arrangements for Wales. In 2004, the Richard Commission pinpointed the shortcomings of the 1998 Government of Wales Act, which led to the separation of executive and legislative functions and, following a further referendum, to the transition to full legislative powers. In 2010, the Holtham Commission analysed the financing and funding of the Welsh Government. During the last two years, the Silk Commission has reported on the transfer of taxation powers and also recommended devolution of further powers, to be expressed through the adoption of a reserved powers model.

These reports established a remarkable degree of political consensus, whilst recognising that current Welsh Government support for the transfer of income tax powers (that, under existing legislation, would require yet another referendum) is nervous and conditional on resolution of conflicting views on continuation of the Barnett formula and its fairness within the Union.

Over the past three years, our Changing Union project has submitted extensive evidence to the Silk Commission as well as convening conferences and seminars that have addressed Welsh and UK level issues. Many of our recommendations have been supported by other organisations throughout Wales as well as by the Silk Commission itself. We see nothing in the Silk proposals that would run contrary to the principles set out above for the Union.

The evidence we have presented during this project spoke to the following issues:

- ending the constant changes to the constitutional arrangements affecting Wales by providing a stable, lasting settlement to meet the needs of present and future generations of Welsh people;
- adopting a reserved powers model to eliminate as far as possible ambiguity and uncertainty in the powers attributed to Wales, so as to ensure that they are readily understood by all in Wales and at all levels of government;
- enhancing effective democratic accountability in Wales, through the transfer of taxation powers, and the creation of a better balance between the executive and an empowered legislature;

- extending the powers of the National Assembly for Wales, to enable the Welsh Government to deal effectively with its challenging economic and social agenda; and
- creating a larger National Assembly, better equipped to deal with its new functions, in particular its new financial responsibilities.

The last of these matters will not be easy to resolve in the present climate of public opinion. But in the course of our work we adduced compelling evidence that, in order to discharge both its present and future functions, the National Assembly needs to be of a broadly similar size to the Scottish Parliament and Northern Ireland Assembly, both of which are considerably larger. We argued for an Assembly of 100 members, to provide more effective scrutiny and attract higher calibre candidates. We thought that this could be achieved at little additional cost, in particular through a redistribution of elected representatives across the tiers of government, consequent on a necessary and imminent reduction in the present number of Welsh local authorities.

It would be foolish to pretend that debate on these matters is at an end. There remains a need within Wales to mature the debate within civil society and the wider public about the implications of the possible changes. For this reason, once the General Election is concluded, we believe a formal deliberative process – parallel to any UK process - needs to be created in Wales by the Welsh Government and National Assembly.

As a precursor to this the UK Changing Union project has already committed to support a legacy project that will be led by the Institute of Welsh Affairs (IWA). In order to broaden the debate and engage civil society this will use crowd-sourcing techniques similar to a process that was used effectively in Iceland to draw up a new constitution in the wake of its economic crisis. The IWA hopes that in this way it can give a wider range of people in Wales a voice and create a continuing dialogue within civil society at a pivotal moment of constitutional change.

The inescapable implication of the First Minister's call for a focus on reshaping the Union is that Wales must engage with this wider debate, and not simply focus on the transfer of further powers to itself. That speaks to two issues: not only the too narrow focus of the debate in Wales, but also the concern that central government is not fully engaging the Welsh Government in these processes. Both must be addressed in the interests of both Wales and the Union.