

National Assembly for Wales

Towards a UK Constitutional Convention? May 2012

This paper provides an overview of recent calls to establish a UK wide constitutional convention. The paper also includes a summary of recent constitutional developments and a synopsis of previous cross-party constitutional conventions, commissions and conferences that have been held in the UK and elsewhere.

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Towards a UK Constitutional Convention?
May 2012

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Towards a UK Constitutional Convention?

1. Introduction

Following the Scottish National Party's (SNP) victory in the Scottish Parliamentary elections in May 2010 and the decision of the SNP Government to hold a referendum on Scottish independence in 2014, the implications of Scotland breaking away from the UK has been placed firmly on the UK's constitutional agenda. Mainly in response to these developments the First Minister, the Rt. Hon Carwyn Jones AM, has recently called on the UK Government to establish a constitutional convention to allow for "an open debate about how the UK itself might function more responsibly to the needs of its constituent parts".¹ He added that "the debate on the UK's future is a matter for all of us, and it shouldn't be led by constant reactions to events in Scotland".²

The First Minister reiterated this position in a speech to the Institute of Welsh Affairs' conference on "Wales and the Changing Union" held in Cardiff on 30 March 2012:

If the people of Scotland vote in favour of independence the shape and constitutional make-up of the UK will be dramatically changed. We will not simply be able to wake up the day after and carry on as if nothing had happened when the top part of the state has been lopped off..! Equally, if the vote is against independence there is still the prospect of substantive constitutional change in one part of the UK that potentially will impact on all other parts of the Union. Wales needs to keep ahead of this debate, not get left behind by the tide of change. We need to define our future in our own terms.

I have therefore called for a United Kingdom Constitutional Convention that would enable all four countries of the Union to discuss its future together, rather than piecemeal. I have written to the Prime Minister on this issue, and await his response.

I am particularly concerned that constitutional reforms are being proposed without reference to other constitutional developments. Take, for example, the forthcoming proposals for reform of the House of Lords. There is potential for reform of the Lords to be an important part of the overall review of constitutional arrangements in the UK, but this linkage simply does not appear to have been made ...

I cannot emphasise enough how important it is that we start discussing the future of the United Kingdom before the people of Scotland go to the polls. We cannot underestimate the substantive impact that constitutional change in Scotland will have on every part of the Union and we must start planning for the future.³

¹ Wales Online, [UK break-up debate 'too Scottish' says First Minister Carwyn Jones](#), 24 January 2012

² Ibid

³ Click On Wales, [Wales and the Future of the United Kingdom](#), 2 April 2012

He added that:

The incremental piecemeal approach to our constitution is destabilising and distracting. Far better, I believe, to have a comprehensive look at what kind of state we want the UK to be and then move towards a written constitution which commits and binds. Part of that constitution would define the relationship between the Devolved Administrations and UK Institutions. “Asymmetric quasi-federalism” is not the snappiest slogan for a political campaign, but the UK has changed beyond recognition over the past 15 years and it is time that our constitution recognised this.⁴

In response to the First Minister’s letter to the Prime Minister a Downing Street spokesman said:

The Prime Minister has received the letter and will respond shortly. He has previously made clear that he is committed to the Union and the government has already introduced measures to strengthen devolution, for example by establishing the Silk Commission in Wales and the Commission on the Consequences of Devolution in the House of Commons.⁵

However, the Political and Constitutional Reform Committee of the House of Commons is undertaking an inquiry into the case for holding a UK Constitutional Convention. It is consulting on the following:

Grounds and basis for establishing a convention

- Is there a case for establishing a constitutional convention for the UK?
- If there were to be a constitutional convention, on what basis should it be established? What would be its legal status, or could it proceed on a more informal footing?
- What lessons could be learned from previous constitutional conventions, in other countries?

Composition

- What should be the composition of the constitutional convention?
- What would be the best way of involving the public in the convention?
- Would there be a means of providing specific representation for England or the English regions, alongside the other components of the UK and the UK as a whole?
- Would the members of convention be mandated and, if so, by whom and to do what?

Remit and working methods

- What should be included in the terms of reference for the constitutional convention? For example, should the convention be tasked with proposing a new constitutional structure for the UK, or establishing an agreement between the different components of the UK on ways of proceeding in their relations with each other and with the UK Government and UK Parliament?
- Are there any legal/constitutional issues requiring particular attention, such as the need to conform to the terms of the Belfast—or Good Friday—Agreement 1998?

⁴ Click On Wales, [Wales and the Future of the United Kingdom](#), 2 April 2012

⁵ Wales Online, [Hennessy supports Carwyn’s push for a federal chamber](#), 24 April 2012

- How should the convention proceed? For instance, on the basis of consensus, unanimity, qualified majority voting, or simple majority voting? Would all the participants in the convention have equal status? Are there any other procedural issues that should be considered at this stage?
- How would proposals made by the convention be taken forwards? For instance, would they require endorsement by the different Assemblies and Parliaments of the UK, or by one or more referendums?⁶

The committee's consultation will close on 14 June 2012.

The purpose of this paper is to provide an overview of recent calls made both in Wales and at the UK level for a convention to be established to address issues relating to the governance of the UK. The paper also includes a summary of recent constitutional developments and a synopsis of cross-party conventions, commissions and conferences that have been previously held in the UK and elsewhere.

⁶ HC Political and Constitutional Reform Committee, Inquiry on a UK Constitutional Convention webpage [accessed 9 May 2012]

2. Previous calls to establish a UK wide constitutional convention

Shortly following his election as the leader of the Liberal Democrats in 2007, the Rt. Hon Nick Clegg MP urged the creation of a British convention modelled on the Scottish Constitutional Convention (see section 4.2. for further information) that would examine the country's "broken political system" and would look specifically at electoral reform and at relations between Westminster and the devolved bodies.⁷ Since then, many other politicians and observers have made similar calls.

The Conservative blogger and political commentator Iain Dale indicated support for the creation of a UK wide constitutional convention in 2009 that would be tasked with addressing a number of related constitutional issues:

I'd like to see a UK wide constitutional convention, made up of all sorts of people and groups, not just elected politicians. It could run along similar lines to the Scottish one from the late 1990s, but England's constitutional future cannot be decided in isolation. There are pressures for the Welsh Assembly to be upgraded to a full parliament, which is something that would have consequences for the UK too. Should the Scottish Parliament also be given further powers? These are not just questions for Scotland and Wales to determine. Such a convention could also look at the future powers and makeup of both the House of Commons and House of Lords, as well as the increasingly important question of the English democratic deficit.⁸

Also speaking in 2009, the former MP and now life peer, Baroness Shirley Williams, felt that the introduction of the UK Government's *Constitutional Reform and Governance Bill* (which eventually became the *Constitutional and Governance Reform Act 2010*⁹) provided an opportunity for the leaders of all the main parties:

... to establish a constitutional convention for the United Kingdom ... a convention on the Scottish model that would include representatives of all parties, of civil society, academia, both sides of industry, the churches and others as the Scottish Constitutional Convention did, together with the tools a deliberating democracy requires.¹⁰

While stopping short of supporting calls for a convention, Lord Wigley recently argued that reforms such as those discussed in relation to the House of Lords "cannot be considered in isolation from other constitutional developments".¹¹ He added that "If the UK has a future, creative thought must be given to the powers devolved to Scotland, Wales and Northern Ireland – and indeed England".¹²

Alan Trench has however argued that proposals to create a UK wide constitutional convention would "run huge risks of running into the ground" and that "A big-bang approach cannot resolve such complex questions in any sort of stable or

⁷ The Guardian, *Brown offers to hold talks with Clegg on constitutional reform*, 30 December 2007

⁸ Iain Dale's Diary, *Do we need a UK-wide constitutional convention?*, 25 May 2009

⁹ *Constitutional and Governance Reform Act 2010* (Chapter 25)

¹⁰ National Library of Scotland, *Shirley Williams: Donald Dewar Memorial Lecture*, 25 August 2009

¹¹ Agenda, *Dafydd Wigley: Turkey's don't vote for Christmas*, Spring 2012

¹² Ibid

lasting way”.¹³ In particular, he highlighted three specific problems that would face the creation and operation of such a convention:

The first is the question of who would take part in such a convention. Would it be the devolved and UK Governments? What about AMs, MLAs, MSPs and MPs? How would delegations from the various institutions be chosen? Who would speak for England, as a whole or its various parts? It’s far from clear how one would constitute such a convention, and what their mandates might be ...

The second problem is that it’s premature at this stage to try to address these issues ... If there is to be some sort of grand convention, there needs to be much greater, cross-party consensus about what these might be, so that they can be taken into that convention ...

The third problem follows from the second. It’s pretty evident that what might be appropriate for Scotland is not for Wales, and the same for each other part of the UK.¹⁴

¹³ Devolution Matters, *[A grand constitutional convention for the United Kingdom](#)*, 29 January 2012

¹⁴ Ibid

3. Recent constitutional developments in the UK

Despite the significance of Scottish independence to the current constitutional debate, it is not the only constitutional development of note that the UK is currently facing.

Since the formation of the Conservative-Liberal Democrat coalition in May 2010, the UK Government has put into law and brought forward numerous proposals in order to fix what it perceives as Britain's "broken" political system.¹⁵ These include:

- The introduction of fixed parliamentary terms of five years in the House of Commons;
- The proposed reduction in the number of MPs from 650 to 600 (and from 40 to 30 MPs in Wales) in time for the 2015 UK General Election;
- The introduction of directly-elected mayors in Liverpool, Leicester and Bristol;¹⁶
- The proposed reform of the House of Lords.¹⁷

In addition to these, the UK Government has transferred greater powers and fiscal responsibilities to Scottish Ministers and the Scottish Parliament through the *Scotland Act 2012*¹⁸ and established the following two Commissions in relation to devolution:

- The Commission on Devolution in Wales (the Silk Commission – see section 4.3 for further information);¹⁹ and
- The Commission on the Consequences of Devolution for the House of Commons (the McKay Commission).²⁰

These recent developments come on the back of a number of significant constitutional reforms undertaken by successive Labour governments between 1997 and 2010. These include the introduction and subsequent development of devolution in Scotland and Wales, the passing of the *Human Rights Act 1998*²¹ and the establishment of the UK Supreme Court.

¹⁵ Cabinet Office, *The Coalition: our programme for government*, May 2010, Section 24

¹⁶ Following referendums held on 3 May 2012, directly-elected mayors have been rejected by voters in Birmingham, Manchester, Newcastle, Nottingham, Sheffield, Wakefield, Coventry, Leeds and Bradford. Bristol however voted in favour of a directly-elected mayor. Both Liverpool and Leicester City Councils had previously resolved to adopt a mayoral system in December 2010 and May 2011 respectively, negating the need for referendums there on the issue.

¹⁷ For further information see National Assembly for Wales Research Service, *Research Paper: Wales and the reform of the House of Lords*, May 2012

¹⁸ *Scotland Act 2012* (Chapter 11)

¹⁹ For further information see National Assembly for Wales Research Service, *Research Paper: The Silk Commission*, November 2011 and National Assembly for Wales Research Service, *Research Paper: The road to the Independent Commission on devolution in Wales*, September 2011

²⁰ For further information see National Assembly for Wales Research Service, *Research Paper: The West Lothian Commission*, March 2012

²¹ *Human Rights Act 1998* (Chapter 42)

As a result of these developments however, some commentators and politicians have argued that the piecemeal manner in which these constitutional reforms have proceeded in the UK over the past 15 years has led to the development of a potentially uncertain and incomplete constitution.²² Writing in 2009, Vernon Bogdanor stated that:

There is a sense of incompleteness about the constitutional reforms since 1997, an uncertainty about their final direction. Constitutional reform has been a process rather than an event, and so far it is an incomplete process.²³

²² House of Lords Library, [*Library Note: Possible implications of House of Lords Reform*](#), 25 June 2010

²³ Ibid

4. Previous constitutional conventions

No constitutional convention has ever been held on a UK wide basis, although such conventions have been a prominent feature of recent constitutional debates in Scotland and Wales.²⁴ Rather than establish UK wide public conventions, British Prime Ministers during the twentieth century have instead preferred to ask the Speaker of the House of Commons to establish and chair formal conferences to reach all-party agreement, with specific reference to reforming electoral law in the UK. Details of these conferences and of the various constitutional conventions held in different parts of the UK and elsewhere are included below.

4.1. *Speaker's conferences*²⁵

The Speaker's conference is a rarely-used type of formal inquiry into the arrangements governing elections in the UK. According to a House of Commons Library Standard Note, "It is a manifestation of the constitutional convention that changes to the electoral system should be agreed as far as possible on an all-party basis".²⁶

There are no fixed or statutory rules governing the creation of a Speaker's conference, however previous conferences have been established by the Prime Minister issuing an invitation to the Speaker to preside over an all-party conference. The terms of reference are usually specified in the invitation, but not the membership or procedure.

There were five Speaker's conferences on matters to do with electoral law and electoral reform in the twentieth century. As Prime Minister, Gordon Brown revived the practice in September 2007, announcing that a new Speaker's conference would be established to consider how to counter declining electoral turnout and boost representation of women and ethnic minorities in the House of Commons.²⁷

Included below is a list of the Speaker's conferences which have taken place since 1916, along with their terms of reference:

- **1916-17:** To examine the reform of the franchise, the basis for the redistribution of seats, the reform of the system of the registration of electors and the method of elections and the manner in which costs of elections should be borne.

²⁴ A Northern Ireland Constitutional Convention was established in 1975 as an attempt to revive devolved government in Stormont, but it failed to reach consensus or operate for any length of time.

²⁵ For further background information see House of Commons Library, [Standard Note: Speaker's conferences](#), 1 December 2009

²⁶ Ibid

²⁷ BBC News, [Speaker's conference](#), 30 October 2008

- **1944:** To examine the reform of the franchise, the redistribution of seats, the conduct and costs of parliamentary elections (including expenses falling on candidates and MPs) and methods of election.

This meeting was crucial to the development of territorial representation at Westminster with the number of MPs for Wales set at a minimum of 35²⁸ (this number has since been reduced to 30 by the *Parliamentary Voting Systems and Constituencies Act 2011*²⁹).

- **1965-68:** To examine the reform of the franchise, the methods of election (with particular reference to preferential voting), the conduct of elections, election expenses generally, the use of broadcasting and the cost of election petitions and applications for relief.
- **1973-74:** To consider electoral registration, particularly the registration timetable, multiple registration and the definition of “residence”, registration of service men, the minimum age for elections and the timing of by-elections.
- **1977-78:** To consider the number of parliamentary constituencies that there should be in Northern Ireland.
- **2008:** To consider rectifying the disparity between the representation of women and ethnic minorities in the House of Commons and their representation in the UK population at large.

Speakers and/or former Speakers have also held other conferences, which are detailed below:

- **1919-20:** Conference on devolution.
- **1929-30:** No specific terms of reference given but the merits of proportional representation and the alternative vote as compared with each other and with the existing system examined and debated.

4.2. Scotland

The Scottish Constitutional Convention was established in 1989 in order to draw-up a detailed blueprint for devolution in Scotland. It consisted of representatives from Scottish civic Society and from some of the political parties (although notably both the SNP and the Scottish Conservatives chose not to take part). The convention’s report – [**Scotland’s Parliament Scotland’s Right**](#) - published in 1995, proposed a Scottish Parliament with primary legislative and limited taxation powers. Those proposals subsequently formed the basis of the Labour

²⁸ See House of Commons Library, [*The Parliamentary Voting and Constituencies Bill Research Paper 10/55*](#), 1 September 2010, Section 4.8

²⁹ [*Parliamentary Voting Systems and Constituencies Act 2011*](#) (Chapter 1)

government's white paper, [Scotland's Parliament](#), which later became the basis for the *Scotland Act 1998*.³⁰

A [Scottish Independence Convention](#), which is affiliated with the SNP, the Scottish Green Party, the Scottish Socialist Party and Solidarity, was established in 2005 to promote Scottish independence and create space for co-operation between party boundaries.³¹

4.3. Wales

In contrast to developments in Scotland, there was an absence of a constitutional convention in Wales prior to the referendum in 1997. According to Wyn Jones and Lewis,³² the lack of such a convention had significant consequences:

The Scottish Convention appears to have played an important role not only in animating the debate over Scottish devolution, but also in securing legitimacy for a particular set of proposals. Indeed, since the 1997 referendums, a number of politicians have argued that the result in Wales might have been a much more convincing vote in favour of devolution had a Welsh Convention been established.³³

Since 1999 however, various all-party commissions and conventions have been established to consider and recommend changes to the Welsh devolutionary settlement initially established by the *Government of Wales Act 1998*.

A Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, chaired by Lord Richard of Ammanford ("the Richard Commission"), was appointed in July 2002 following a commitment made as a result of the coalition deal in the Assembly between Labour and the Liberal Democrats in October 2000.

The Commission published its [report](#) in the spring of 2004. Many of its recommendations were incorporated initially into the then Labour government's white paper, [Better Governance for Wales](#), which later became the basis for the *Government of Wales Act 2006*.³⁴ According to one of its members, Professor Laura McAllister, the work of the Commission "both reflected and stimulated a higher level of public engagement with the devolution project" especially given "the low level of sophistication and self-confidence that characterized political debate in Wales prior to 1997".³⁵

³⁰ [Scotland Act 1998](#) (Chapter 46)

³¹ Scottish Independence Convention, [About Us](#)

³² For further information see Wyn Jones, R. & Lewis, B. 1998. *The Wales Labour Party and Welsh Civil Society: Aspects of the Constitutional Debate in Wales*, PSA Annual Conference, University of Keele, April 7-9 1998

³³ Ibid

³⁴ [Government of Wales Act 2006](#) (Chapter 32)

³⁵ McAllister, L. 2005

Following the 2007 Assembly election, a commitment to establish an “All-Wales Convention” was a central feature of the “One Wales” coalition agreement between Labour and Plaid Cymru. Emyr Jones-Parry was appointed as Chair of the convention in October 2007 and an executive committee of 16 members were appointed in July 2008. Its main objective was “to assess the public views on the primary law making powers which the National Assembly for Wales should enjoy”.³⁶ The Convention held numerous public meetings and published its [report](#) in November 2009. Its recommendations subsequently informed the referendum on further powers to the Assembly which took place in March 2011.

Following the UK General Election in May 2010 and the subsequent formation of the Conservative-Liberal Democrat coalition government at Westminster, a further [Commission on Devolution in Wales](#) was established with Paul Silk appointed as Chair. The Commission is tasked with carrying out its work in the following two parts:

- **Part 1: Financial Accountability:** This part will review the case for the devolution of fiscal powers to the Assembly and to recommend a package of powers that would improve the financial accountability of the Assembly. The Commission will report on this part by late autumn 2013. This part must be completed before work begins on Part 2.
- **Part 2: Powers of the Assembly:** This part will review the powers of the Assembly in the light of experience and to recommend modifications to the present constitutional arrangements. The Commission will report on these issues by spring 2014.³⁷

³⁶ All Wales Convention, [All Wales Convention Report](#), November 2009

³⁷ For further information see National Assembly for Wales Research Service, [Research Paper: The Silk Commission](#), November 2011 and National Assembly for Wales Research Service, [Research Paper: The road to the Independent Commission on devolution in Wales](#), September 2011

5. Approaches in other countries

5.1. Australia

A constitutional convention was held in Australia between 2 and 13 February 1998 on issues relating to whether Australia should become a republic or not. The convention lasted for ten days and was given the task of resolving the following issues:

- Whether or not Australia should become a republic.
- Which republican model should be put to the electorate to consider against the status quo?
- In what time frame and under what circumstances might any change be considered?

The convention supported the creation of a republic in principle and resolved that a referendum be held in 1999 to allow Australians to decide whether to make the move to a republic or to maintain the status quo.

The convention was limited to considering these three issues only. It gave little or no attention therefore to other Australian constitutional issues of note, such as federalism, or the creation of a Bill of Rights.³⁸

5.2. Canada

Rather than establish one-off conventions to discuss and reach agreements on issues of national importance, Canada holds regular intergovernmental conferences between the Canadian Prime Minister and the provincial First Ministers to ensure “consultation, co-ordination, negotiation and agreement among federal, provincial and territorial governments”.³⁹ These conferences are held as the need arises and generally focus on a set of topical issues, such as health care and economic development in addition to constitutional issues.⁴⁰

A notable First Minister’s Conference on the Constitution was held in 1981 following a referendum in 1980, where the majority of voters refused to give the government of Quebec a mandate to negotiate the terms of secession from the rest of Canada. Following the result, the federal Prime Minister, Pierre Trudeau proceeded with plans to “repatriate” or “bring back” the Canadian Constitution from the UK with an amending formula and entrenched rights for all Canadians.⁴¹

³⁸ For more information see Parliament of Australia, [The 1998 Constitutional Convention-First Impressions](#), 23 March 1998

³⁹ Canadian Intergovernmental Conference Secretariat, [CICS Brochure](#)

⁴⁰ A list of all the Canadian First Minister’s Conferences held between 1906 and 2004 is available in Canadian Intergovernmental Conference Secretariat, [First Minister’s Conferences 1906-2004](#)

⁴¹ Further information relating to the repatriation of the Canadian Constitution is available on Canada History, [The Constitution](#)

In light of these developments, the subsequent First Minister's Conference was crucial in settling an agreement between the federal and provincial premiers on the issue of "repatriation", despite the First Minister of Quebec rejecting the deal. Patriation of the constitution together with an amending formula and a charter of rights was subsequently effected on April 17 1982 when the Queen, at a ceremony on Parliament Hill in Ottawa, signed a proclamation giving effect to the *Constitution Act 1982*.