

Draft article for LSE

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In the 14 years since it was first elected, the National Assembly for Wales has gone from a corporate body with some secondary law-making powers, to a national legislature with full primary law-making powers, standing alongside a separate [Welsh Government](#) executive. ~~There is~~ has been an incremental process of substantial change, ~~which many in Wales think is not yet finished~~.

~~The Commission on Devolution in Wales is responsible for considering what, if any, the next steps in Wales's journey of devolution should be.~~

~~The Commission, sometimes known as the Silk Commission, was established by the UK Government in October 2011 following a commitment in its programme of government.~~

~~Readers may remember that~~As background, there was a very narrow majority result in favour of devolution in the 1997 referendum, ~~and which some have suggested this may be accounts for~~ why the National Assembly elected in 1999 had fairly limited responsibilities. Even so, the establishment of the National Assembly gave Wales its first ever ~~Sometimes it can be overlooked that this was the first time since the middle ages that Wales had a distinct~~ nationally elected autochthonous political institution.

In this early period, when I served as Clerk to the Assembly, the Assembly accrued more powers. A second Government of Wales Act in 2006 established the Welsh Assembly Government (now Welsh Government) as a distinct executive, and allowed the National Assembly to take on incrementally primary legislative powers in devolved policy areas, subject to parliamentary approval in each case. It also allowed for a second referendum on full primary law-making powers. This was, held, earlier than many had expected, in 2011. In that referendum, ~~where~~ the people of Wales voted convincingly for the National Assembly for Wales to take on primary ~~law-making~~ powers in all areas of devolved responsibility.

The Westminster Coalition Government's programme for government in 2010 ~~said~~ tated that, if the people of Wales voted for primary full law-making powers, the time would be right for a consideration of Wales's constitutional arrangements. So, hence the Commission on Devolution in Wales- (often – despite my squeamishness - given the shorthand title of the Silk Commission) was established. We were given the job of considering what, if any, the next steps in Wales's journey of devolution should be.

Our Terms of Reference ~~of the Commission~~ were developed in consultation with the Welsh Government and the four political parties in the National Assembly for Wales. The Commission is independent of government, and has one four members nominated by each of the political parties in the Assembly and four non-party independent members. We have had two parts to our remit – financial arrangements and broader powers. In both we are asked to come up with proposals that will have a broad acceptability in Wales.

Part I was concerned about whether tax and borrowing powers should be devolved to the ~~Welsh~~ Assembly. The ~~Silk~~ Commission's first report in November 2012 *Empowerment and Responsibility: Financial Powers to Strengthen Wales* argued that funding devolved government like a central government department was inappropriate. ~~We, and~~ recommended that some tax and borrowing powers should be devolved, broadly in line with the powers ~~given provided~~ to the Scottish Parliament in the 2012 Scotland Act. This would include some smaller taxes such as landfill tax, stamp duty land tax, aggregates levy and long haul air passenger duty, and the full devolution of business rates. To ensure the National Assembly would be responsible for raising a meaningful level of its own expenditure, we recommended income tax be shared ~~between the governments in London and Cardiff~~ (following a referendum), with the National Assembly being able to vary income tax rates ~~(subject to a referendum)~~. In addition we recommended other changes such as improved financial information and a new Welsh Treasury function. The UK Government and Welsh Government are discussing separately the operation of the Barnett formula in Wales ~~to decide the level of the continuing block grant, on which they made an announcement about progress in October 2012.~~

As a cross-party Commission, we were particularly pleased to have produced a unanimous report ~~that. The report~~ was welcomed by all the political parties in Wales, and was unanimously endorsed in a vote in the National Assembly. The UK Government's full response is expected in the autumn of 2013, ~~but they have already clearly having~~ endorsed our argument for a degree of self-financing for the National Assembly. ~~There is one area where we know they are still undecided as they in the 2013 Spending Review, and~~ launched a short consultation on the devolution of stamp duty in July.

In the second part ~~of our work~~, the Commission is examining the powers of the Assembly more generally, with a view to improving the way in which the devolution settlement serves the people of Wales. This might include both changes to the powers devolved to the Assembly and other ways of making devolution work better such as closer working between the UK and Welsh Governments. We will publish our second report by the spring of 2014.

The Commission has received over 150 written responses to our call for evidence and ~~is are~~ keen to receive further evidence. In May and June we held public meetings in all parts of Wales, and in early August we published an opinion poll we commissioned. This showed broad support for the devolution of further powers, but we are conscious that this is not a universally held view. All evidence collected is published on our website ([www.commissiondevolutioninwales.independent.gov.uk](http://www.commissiondevolutioninwales.independent.gov.uk)).

Among the key issues raised are:

- should the existing conferred powers model, whereby specific powers are conferred on the Assembly by the UK Parliament, be replaced by a reserved powers model (similar to Scotland and Northern Ireland), whereby powers are devolved unless specifically reserved to the UK Parliament?
- should policing and ~~criminal~~ justice powers be devolved (as in Scotland and Northern Ireland)?

- should powers over energy, natural resources, rail and ports, broadcasting, employment programmes be devolved?
- should any powers be returned to Westminster?
- can the settlement be improved in other ways, such as improving cross border arrangements and more effective working between devolved and non devolved institutions?

~~The Commission has, as you would expect, visited both~~~~In addition to visiting~~ Scotland and Northern Ireland. ~~But we have, the Commission has~~ also been reviewing the international evidence on devolution, including the experience of federal systems abroad documented by the Forum of Federations ~~;~~ ~~though we~~ ~~while~~ recognising that the ~~fact that the~~ UK does not have a federal system of government ~~can make international comparisons difficult~~. We would welcome readers' input if they can suggest norms or best practice from countries with systems of sub-national government.

The Commission is aware of the need to ensure its recommendations are conducive to a stronger Welsh economy and business, ~~something we~~ ~~which it~~ sought to achieve with ~~our~~ ~~its~~ first report. ~~We are also well aware that~~

~~The Commission is also assessing~~ the development of the Welsh devolution settlement ~~has to be seen~~ in the context of wider constitutional developments across the UK.

If you have views about the future of Wales, we would like to hear from you by 27 September if possible. Further information can be found on the Commission's website [commissionondevolutioninwales.independent.gov.uk](http://commissionondevolutioninwales.independent.gov.uk).

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