

Institution: Cardiff University		
Unit of Assessment: Politics and International Studies (19)		
Title of case study: Forging a revised constitutional relationship between Wales and the UK state through the Wales Act 2017		
Period when the underpinning research was undertaken: 2009-2016		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Richard Wyn Jones Ed Gareth Poole Guto Ifan	Professor Senior Lecturer Research Associate	01/02/2009 - present 01/09/2014 - present 21/09/2015 - present
Period when the claimed impact occurred: 01/08/2013-31/12/2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>The 2011 devolution referendum, which gave Wales new law-making powers, changed the constitutional relationship between Wales and the UK. Cardiff researchers examined the constitutional design of Welsh devolution, including funding arrangements. This research evidence: i) influenced the outcomes of the Commission on Devolution in Wales (Silk Commission), including its recommendation that Wales move to a 'reserved powers' model of devolution; ii) strengthened the Wales Act 2017; and iii) secured a fair financial settlement for Wales through the fiscal framework, resulting in an additional £360M for the Welsh budget for 2018-2021. This ensured that the new Welsh devolution settlement was more sustainable and stable than its predecessors.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>The result of the Welsh referendum in 2011 gave Wales primary law-making powers in all 20 devolved subject areas, without involvement from Westminster or Whitehall. Researchers from the Wales Governance Centre (WGC), based in the School of Law and Politics at Cardiff University, analysed constitutional design in Wales and identified an improved pathway for implementation of these powers [3.1].</p> <p>This research focused on why - constitutionally speaking - Welsh devolution had proven to be so unstable. The project drew on original archival research from the 1960s onwards, interviews with high-level political actors, and studies of the secondary literature to reveal [3.1]:</p> <ul style="list-style-type: none"> • constitutional design in Wales had been almost wholly dominated by internal deliberations within a single political party, reflecting the wider pattern of one-party electoral dominance, leading to intra-party compromise over constitutional principle or coherence; • the problematic 'conferred powers' model of legislative devolution established after the referendum, which limits Wales to powers bestowed by the UK Government; • the unconvincing rationale of the UK Government for rejecting a 'reserved powers' model of devolution for Wales (where everything is devolved except those matters specifically reserved to the UK level). <p>2.1 UK's Changing Union</p> <p>Building on the findings of [3.1], in 2012 the 'UK's Changing Union' project (UKCU) was established and chaired by Wyn Jones, as a joint initiative between the WGC, Cymru Yfory/Tomorrow's Wales (an NGO chaired by the then-Archbishop of Wales) and the Institute of Welsh Affairs (Wales' leading independent think tank) [G3.1, G3.2]. The project influenced the work of the Commission on Devolution in Wales (Silk Commission), an independent commission set up by UK Government to make recommendations on the constitutional and financial arrangements for Wales. UKCU was also designed to encourage and facilitate wider civil society participation in the Commission process, and produced research, evidence and recommendations</p>		

for the future structure of Welsh devolution. The research:

- showed the importance of better governance and enhanced accountability [3.2];
- provided options for tax devolution in the context of a fairer fiscal settlement [3.2];
- recommended a reserved powers model of devolution [3.3].

2.2 The Draft Wales Bill

The UK Government implemented the Silk Commission's recommendations in two pieces of legislation: the Wales Act 2014, which focused on finance, and the Wales Act 2017, which reshaped the devolution settlement. While the principle of 'reserved powers' was accepted, the initial Draft Wales Bill (precursor of the Wales Act 2017) interpreted the implications of maintaining a single (England and Wales) legal jurisdiction in a particularly restrictive manner. The WGC, in partnership with University College London's Constitution Unit, established an expert group of 10 academics and practitioners chaired by Wyn Jones to produce detailed independent analyses of both the Draft Bill and the preceding White Paper [G3.3]. Two reports from this group built on previous WGC research and found that [3.4, 3.5]:

- the proposed 'necessity tests' to determine the acceptability of the Welsh legislature's proposed actions were far too restrictive, would in effect rollback devolution, and thus lead to further instability;
- the UK Government's proposed list of reservations was too broad and its underpinning rationale obscure.

2.3 The Fiscal Framework

The implementation of both Acts was dependent on the UK and Welsh Governments agreeing a fiscal framework. In response, the Cardiff team modelled the effects of multiple formulas for implementing fiscal devolution and minimum funding level protections for Wales. This analysis focused on how the Welsh Government's block grant should be adjusted after tax devolution [3.6], finding that:

- Wales' tax base is significantly different to the rest of the UK, with a notably higher share of income earned at the basic rate and a slower growing population. Block grant adjustments should account for Wales' lower income levels, while population growth risk should be treated in line with existing block grant arrangements [3.7];
- Expanding on the analysis of the Independent ('Holtham') Commission on Funding and Finance for Wales, the Barnett formula should be reformed to include a 'needs-based factor', which would increase the size of increments to the Welsh Budget. This would limit the extent of the 'Barnett squeeze' – the process by which relative spending per person in Wales tends to converge to the level in England over time [3.7].

In analysing the instability of the existing Welsh devolution settlement, Cardiff researchers provided a crucial evidence base underpinning the argument for Wales to move to a 'reserved powers' model of devolution. They further highlighted problematic areas of the Draft Wales Bill and provided critical recommendations concerning devolved funding arrangements. These findings were influential for key political stakeholders in Wales and the UK.

3. References to the research (indicative maximum of six references)

[3.1] Wyn Jones, R. & Scully, R., *Wales Says Yes Devolution and the 2011 Welsh Referendum*, 2012, University of Wales Press. DOI/10.1111/1478-9302.12016_103

[3.2] UK's Changing Union, (Feb 2012 & August 2012), *UKCU Submissions to Part One of the Commission Devolution in Wales*.

<http://www.law.cardiff.ac.uk/ukcu/papers/02/UKCU%20pt%20one%20Silk%20submission%201.pdf>

Wyn Jones, R. was PI for, and chaired, the UKCU project 2012-2015 which produced this report.

[3.3] UK's Changing Union (2013), *A Stable, Sustainable Devolution Settlement for Wales*.

<http://www.law.cardiff.ac.uk/ukcu/papers/02/UKCU%20Submission%20to%20Silk%20%20March%202013%20FINAL.pdf>

Wyn Jones, R. was PI for, and chaired, the UKCU project 2012-2015 which produced this report.

[3.4] Wales Governance Centre (2015), *Delivering a Reserved Powers Model of Devolution for Wales*.

https://www.cardiff.ac.uk/__data/assets/pdf_file/0004/1288696/Devolution-Report-ENG-V4.pdf

Wyn Jones, R. chaired the Review Group that produced this report.

[3.5] Wales Governance Centre (2016), *Challenge and Opportunity: The Draft Wales Bill 2015*.

https://www.cardiff.ac.uk/__data/assets/pdf_file/0011/1288694/Challenge-and-Opportunity-The-Draft-Wales-Bill-2015.pdf

Wyn Jones, R. chaired the Review Group that produced this report.

[3.6] **Poole, E.G., Ifan, G. & Phillips, D.**, *For Wales Don't (Always) See Scotland: Adjusting the Welsh Block Grant after Tax Devolution*, 2016. Available from HEI on request.

[3.7] **Poole, E.G., Ifan, G. & Phillips, D.**, *Barnett Squeezed? Options for a Funding Floor after Tax Devolution*, 2016. Available from HEI on request.

Selected grants:

[G3.1] **Wyn Jones, R.**, 'The UK Changing Union', Joseph Rowntree Foundation, 01/01/2012-31/12/2014, £130,000

[G3.2] **Wyn Jones, R.**, 'The UK Changing Union', Nuffield Foundation, 01/04/2012-30/05/2016, £150,000

[G3.3] **Wyn Jones, R.**, 'Constitutional Change Knowledge Exchange leadership fellowship', ESRC, 01/05/2015-31/03/16, £51,031

4. Details of the impact (indicative maximum 750 words)

Wales Governance Centre (WGC) research ensured that Wales' devolution settlement is more sustainable and stable. Rob Humphreys CBE, Member of the (Silk) Commission on Devolution in Wales, stated that the research "*contributed to significant changes to the constitution of the United Kingdom and the governance of Wales*" which led to "*an altered and enhanced status of citizenship for every resident of Wales, and enhanced scope and status for their institutions of government*" **[5.1]**.

4.1 Influencing the recommendations of the Commission on Devolution in Wales (2014)

In 2014, the Silk Commission's second report recommended a new constitutional relationship between Wales and the UK, with the devolved level given legislative powers **[5.2]**. Rob Humphreys stated that "*Professor Wyn Jones' research, through the UK in a Changing Union project had an undeniable, clear, manifest and measurable impact*" on the report **[5.1]**. For example, "*the research foregrounded the importance of more effective governance and enhanced accountability*", and this key principle underpinned the Commission's recommendations **[5.1]**.

Wyn Jones, on behalf of the UKCU project, gave evidence to the Commission at formal sessions as well as playing an informal advisory role. The report cites Wyn Jones and the Cardiff team throughout the report, through citing the UKCU submissions 19 times, and a further nine references to evidence from Cardiff Law School **[3.1, 3.2, 3.3]**. This is more than four times the next most cited academic reference in the report, and more than double the next most cited evidence (from the Electoral Reform Society) **[5.2]**.

UKCU's recommendation that Wales move to a reserved powers model is reflected in the report's conclusions **[5.2]**. Sir Paul Silk, Chair of the Commission, noted that "*their [WGC] research, and in particular the conclusions of the UKCU project, was important in solidifying the argument for the reserved powers model and making the argument irrefutable*" **[5.3]**. The Chair viewed WGC as "*unpaid specialist academic advisors*" to test out and get feedback on the Commission's ideas and emerging conclusions as they were developing. This helped ensure the recommendations reached cross-party consensus **[5.3]**.

Humphreys stated that Wyn Jones also "*helped to generate an intellectual shape and coherence to the whole process*" as a number of key stakeholders submitting evidence were "*drawing on and informed by*" his work **[5.1]**. The representative of Cymru Yfory/Tomorrow's Wales for UKCU noted that "*prior to the research...civil society organisations had not been able to contribute as a*

cohesive whole in the debate...some organisations had been unable to engage at all [5.4].

The UKCU project's strategic decision to encourage and facilitate wider civil society participation in the process critically *"built the capacity of the sector to understand and engage with the debate"* [5.4]. For example, it led to the Commission's final report including a declaration signed by thirty civil society organisations in favour of the reserved powers model. Cymru Yfory/Tomorrow's Wales representative stated that: *"Their voices were heard as a sector together in the debate for the first time"* meaning that *"a more sustainable and stable settlement was reached, which involved the voices and met more of the needs of civil society groups, and the people they represent"* [5.4].

The second report of the Silk Commission was seen as *"an important step in the ongoing journey of devolution"* and led to changes in public policy and legislation, in particular the Wales Act 2017, as outlined below [5.3].

4.2 Strengthening the Wales Act 2017 (2015-2017)

Following the completion of the work of the Silk Commission, the UK Government began a review of the Welsh devolution settlement and published the Draft Wales Bill in October 2015.

a. Identifying problems with the Draft Wales Bill (2015)

Glynne Jones, Director of the Office of the Secretary of State for Wales since 2013, noted that the first Draft Bill *"set out a major change in the UK's constitutional framework"*, moving the settlement from a 'conferred powers' model to 'reserved powers' [5.5, 5.6].

The research (in particular 3.5) and evidence given by Wyn Jones and colleagues to the Welsh Affairs Select Committee and Welsh Grand Committee [5.6a-c] *"shone a new and glaring light on the aspects of the Draft Bill that were most problematic and made a compelling case to the UK Government to rethink its approach"* [5.5]. For example, the research revealed the unsuitability of two key elements of the Draft Bill:

- Necessity tests: *"The research was invaluable in setting out the rationale underpinning those arguments and drilling down into what the precise difficulties were"* [5.5 – Glynne Jones];
- Proposed list of reservations: In the debate at Welsh Grand Committee in February 2016, the research was cited ten times to support concerns that the proposed list of reservations was too broad, with a lack of justification for some inclusions [5.6b]. In the same month, the Welsh Affairs Committee cited Wyn Jones' research seven times, including in the evidence for Recommendation 8 that the list of reserved powers be revised as the criteria for choosing them were unclear [5.6c, p.10, p.32].

Wyn Jones advocated for a delay to the Bill to address these issues, otherwise they would *"undermine the clarity of the devolution settlement and unnecessarily inhibit the Senedd from acting in certain areas"* [5.5]), and also to allow civil society to contribute to the debate to create a more sustainable settlement [5.6c].

b. 'Pausing' the Draft Bill (2016)

Glynne Jones confirmed that the strength of the concerns raised by the research led to *"the highly unusual decision to 'pause' the draft Bill"* [5.5]. This decision was announced by Stephen Crabb (Welsh Secretary) at a WGC event in February 2016 [5.5]. His speech noted that the revised Bill would remove the 'necessity tests' and reduce the number of reservations [5.5, 5.6d]. Jones stated: *"The influence of Professor Wyn Jones and the WGC is amply illustrated by the fact that the Welsh Secretary directly addressed this decision to them and noted the areas that they had highlighted which the Government would now be reconsidering"* [5.5].

c) Securing changes to the Draft Wales Bill (2016)

Jones noted that *"the impartial evidence base provided by Professor Wyn Jones meant that we were able to get real purchase with the relevant UK Government departments and allowed us to revisit the case for the necessity tests and various reservations"* [5.5]. The revised Draft Wales Bill, reintroduced in July 2015, retained the reserved powers model, and removed:

- the 'necessity tests', and
- reservations that could not be clearly justified [5.5, 5.6b, 5.6c].

The Bill, passed as the Wales Act 2017 [5.7], “was a marked improvement on the 2015 draft Bill” [5.5]. It “represents the first time that external, expert opinion has had such a significant impact on the shape of the Welsh devolution settlement” [5.5].

4.3 Securing a fair financial settlement for Wales (2016-2017)

The implementation of the Wales Act 2017 was contingent on the UK and Welsh Governments reaching an agreement on a fiscal framework [5.8, 5.5]. During the fiscal framework negotiation between the Welsh and UK Governments, Glynne Jones notes that WGC provided advice through formal reports, evidence at Committee sessions, and “frequent informal meetings and discussions to shape the plans for the new fiscal framework and how the Welsh Government’s block grant could be adjusted after tax devolution” [5.5].

Jones noted the importance of “WGC’s contribution... in terms of expert analysis, challenging Treasury thinking and developing options where there were signs of an impasse between the two Governments” [5.5]. The final fiscal agreement (December 2016) included recommendations drawn from WGC work [3.6, 3.7]:

- Block Grant Adjustments for each band of income tax devolved [5.9, p.11, p.12];
- The ‘needs-based factor’ - multiplying increments to the block grant - was temporarily set to at 105% (eventually becoming 115%) [5.9, p.20].

The needs-based factor delivered an additional £360 million for the Welsh budget for the period 2018/19-2020/21 [5.10, p.9]. Jones noted that: “This is yet another example of where WGC has been an integral part of recent developments in the Welsh devolution settlement, opening the door to tax devolution in Wales and putting in place fair, sustainable and coherent funding arrangements across all the Welsh Government’s tax and spending responsibilities” [5.5].

Sources to corroborate the impact (indicative maximum of 10 references)

[5.1] Testimonial – Rob Humphreys CBE, Member of the Commission on Devolution in Wales

[5.2] Commission on Devolution in Wales (2014), *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*

[5.3] Testimonial – Sir Paul Silk, Chair of the Commission on Devolution in Wales

[5.4] Testimonial – Representative of Cymru Yfory / Tomorrow’s Wales on UK in a Changing Union project (2013)

[5.5] Testimonial – Glynne Jones CBE, Director, Office of the Secretary of State for Wales

[5.6] a. Evidence to House of Commons Welsh Affairs Committee in respect of Pre-legislative scrutiny of the draft Wales Bill (9.11.2015) b. Debate at Welsh Grand Committee (3.2.2016) c. House of Commons Welsh Affairs Committee Pre-legislative scrutiny of the draft Wales Bill (28.2.2016) d. Press release ‘Amended Wales Bill will deliver a stronger devolution settlement’ – Stephen Crabb, Secretary of State for Wales (29.02.2019)

[5.7] House of Commons Library Wales Act 2016-17 research briefing

[5.8] Senedd Cymru – Welsh Parliament Record of Proceedings (17.1.2017)

[5.9] The agreement between the Welsh Government and the UK Government on the Welsh Government’s fiscal framework (19.12.2016)

[5.10] Finance Committee Enquiry into the Implementation of the Wales Act 2014: Welsh Government response (2020)