

Wales's constitutional position within the UK

Wales's constitutional position within the UK is not a straightforward matter since there is no one document that describes the relationship. The UK is often said to have an 'unwritten constitution', though there are many sources that set out its constitutional arrangements, from legislation such as the 1701 *Act of Settlement* (which lays down that only Protestants can succeed to the throne) to constitutional commentaries such as Walter Bagehot's *The English Constitution* (1885) and A.V. Dicey's *The Law of the Constitution* (1867). Until the mid part of the 20th Century a major principle underlying the UK constitution was said to be the Westminster Parliament's supremacy in passing, repealing or altering the laws of the UK. However, that has been progressively undermined by supra-national human rights legislation, in particular the European Convention on Human Rights (1950); the UK's membership of the European Union (since 1975); and devolution to the National Assembly for Wales, the Scottish Parliament, and the Northern Ireland Assembly (since 1999).

Following the death of the last native Prince of Wales Llewellyn II in 1282, Wales was ruled by the King of England, though it did not become part of the Kingdom of England. The process of legal union with England was only completed by the 'Acts of Union' (more accurately, 'Acts of Incorporation') under the Tudors in 1536 and 1543. The law of England became the only law of Wales and, to administer it, justices of the peace were appointed in every county. Wales was represented in Parliament by 26 members. The 1543 Act established the court of great session, and a distinct Welsh system of courts based upon four three-county circuits.

Wales, therefore, became the first distinct territory of what was to become the United Kingdom to be united with England. Subsequently, the *Wales and Berwick Act 1746* ruled that the word 'England' in a statute should be taken to include Wales. Section 3 of the Act provided that, "in all cases where the Kingdom of England, or that part of Great Britain called England, hath been or shall be mentioned in an Act of Parliament, the same has been and shall from henceforth be deemed and taken to comprehend and include the Dominion of Wales". By the 19th Century the Liberal Prime Minister Ewart Gladstone could claim that, "The distinction between England and Wales is totally unknown to our constitution."

Nevertheless, the United Kingdom remained a multi-national state and since the late 19th Century movements gathered pace which have resulted in first administrative and later political acknowledgement of this reality. The result has been a weakening in the unitary character of the UK constitution and a movement towards the creation of a quasi-federal structure. In 1885 the *Secretary of Scotland Act* created the Scottish Office. In Wales, although some outposts of Whitehall departments had been in existence since the early 20th Century, such as the Welsh Department of the Board of Education created in 1907, Wales had to wait until 1964 until the post of Secretary of State for Wales was created.

Nevertheless, this was a pivotal moment in developments that were to lead to the creation of the National Assembly in 1999. The prime mover in the creation of the Welsh Office was the first (Charter) Secretary of State for Wales, Llanelli Labour MP Jim Griffiths. However, the many arguments and manoeuvres he made to achieve it, notably debates with Ebbw Vale Labour MP Aneurin Bevan in the late 1950s, were conducted essentially behind closed doors.

Subsequently, however, there were heated public arguments over the need for an elected Assembly to make the Welsh Office and its many appointed bodies directly accountable to the people of Wales. Key moments were:

- The election of Plaid Cymru's Gwynfor Evans in the 1966 Carmarthen by-election.
- An attempt by Griffiths's successor as Secretary of State for Wales, Cledwyn Hughes, to establish an all-Wales elected council as part of a reorganisation of local government in 1967.
- Publication of the Kilbrandon Commission report on the Constitution in 1973 recommending an Assembly for Wales.
- The two general elections of 1974 which resulted in Labour governments with fragile majorities and the election of first two and then three Plaid Cymru MPs.
- The failed devolution referendum in 1979.
- Creation of S4C in 1982.
- The 1984-5 miners strike.
- Labour's renewed commitment to devolution in the mid-1990s, led by Shadow Secretary of State Ron Davies.

Ultimately these events led to the successful referendum in 1997 and the establishment of the National Assembly for Wales in 1999. Along with devolution in Scotland and Northern Ireland, the creation of the National Assembly fundamentally changed Wales's constitutional relationship with the rest of the United Kingdom. Instead of a unitary state the United Kingdom had become a Union State – or perhaps more accurately a 'State of Unions' – which was moving in a quasi-federal direction. This will be underlined if Wales achieves greater legislative powers following a referendum as laid down in the 2006 Wales Act.