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Is dominion status a solution for Wales? If Wales gains new powers next year, will the nation follow Canada and Australia on the path towards independence - and could the entire UK unravel, asks Noel Cox of Aberystwyth University

0 Comments | Western Mail (Cardiff, Wales), Sept 14, 2010

NEXT year the people of Wales will face a crucial decision. Separate from a United Kingdom-wide referendum on electoral reform, a Wales-specific referendum asks: "Do you agree that the Assembly should now have powers to pass laws on all subjects in the devolved areas without needing the agreement of Parliament first?" This may be one specific question, but the underlying issues are much broader than that. They concern the direction and nature of constitution-building, and ultimately, the future of the United Kingdom.

From 1999 the Welsh Assembly had executive and legislative powers, or more properly perhaps, enhanced executive powers, for the Government of Wales Act 1998 conferred upon the Assembly most of the powers of the Welsh Office, and the Secretary of State for Wales.

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In 2007 the legislative and executive powers were separated constitutionally - though naturally there had been an informal division from 1999 - and the Government of Wales Act 2006 conferred powers on the Welsh Assembly to legislate in some areas through Assembly Measures - subject to veto by the Secretary of State or the United Kingdom Parliament.

Today, Welsh Ministers exercise powers in their own right, as part of what is called, perhaps anomalously, the Welsh Assembly Government. The First Minister is appointed by the Queen, on the nomination of the Assembly.

He is said to represent the Crown in Wales, though he does so only to the extent that any Minister is a Minister of the Crown - he does not hold gubernatorial office.

This leaves the Assembly as a true legislative body, however much its law-making powers may be circumscribed. The coming referendum will address the question of whether the Assembly should have primary law-making powers independent of Westminster (or indeed of Whitehall).

This will fundamentally change the constitutional landscape of the United Kingdom, in some ways more radically than did the creation of the Scottish Parliament, with its own law-making powers, in 1999.

Direct parallels may be seen between the devolution of power to Cardiff, and the evolution of the dominions and realms of the former British Empire from the late 19th century onwards. These countries first acquired executive independence, largely through acquiring the right to advise the sovereign directly, without having to go through British ministers.

They then obtained the right of legislative independence, invariably initially subject to veto by the Queen (in practice the Secretary of State), and the overarching legislative supremacy of the United Kingdom Parliament, but later untrammelled. After this, they were, for all practical purposes, independent countries, though in many cases the preserved right of appeal to the Judicial Committee of the Privy Council meant that they continued to share the highest tier of the judiciary, just as they shared the same sovereign.

To follow this analogy, the logical next step for Wales would be "dominion status". In effect, Wales would be completely independent of the United Kingdom, able to make its own laws and in no way subject to the legislative or executive control of any other external body, with the Queen acting only on the advice of Welsh Ministers.

However, there is one critical difference between the experience of Canada and New Zealand and "other realms and territories", and the situation in which Wales finds itself.

Wales is not an overseas dependency, but an integral part of the United Kingdom. Executive

and legislative powers have been conferred on the Welsh Assembly Government, and the Welsh Assembly, in many areas, but not in all.

Unlike the dominions, which were in practice largely self-governing from the early days of their establishment, excepting principally in areas of wider imperial concern - such as defence and citizenship - Wales is a part of the United Kingdom.

It is represented in Parliament (something no dominion ever was), and the non-devolved powers are much more extensive, and properly so, given the social, economic, legal and political elements of unity. The reality of a shared legal system is also important.

The justification for devolution from 1999 was to bring government closer to the people. It was also a reaction to the perceived distance of Westminster.

The limited legislative delegation under the Government of Wales Act 1998 and the Government of Wales Act 2006 achieves this objective; to increase the legislative powers of the Welsh Assembly, however, raises the question of where this is headed.

The greater the degree of devolution, the higher the chances of direct conflict between the United Kingdom as a whole and Wales. It might be asked whether it could create internal tensions within the United Kingdom which could threaten its collapse - at a considerable cost to all concerned? Ultimately this is a question which the people of Wales, and the United Kingdom as a whole will need to address. Professor Noel Cox is head of law and criminology at Aberystwyth University. He previously led the law department at Auckland University of Technology

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