



Devolution in the UK: Historical Perspective

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This paper considers the current territorial distribution of political authority within the United Kingdom (UK), and prospects for the future, from an historical perspective. It discusses the uneven and diverse ways in which UK governance has developed, how they have led to the present position, and what the consequent trajectories of development might be. The author also considers whether the analysis of specific circumstances or tendencies from the past may enhance our understanding of contemporary issues. The overall purpose of the paper is to answer the questions: how did we get where we are now, and what guidance might past patterns of development offer for the future? It begins by considering the nature of the UK as a multinational, 'union' state, and the constitutional implications. Next it discusses the history of devolution, both as a concept and a practical reality, the different models employed, and the particular issues that arise. Finally, it assesses what might be the range of options of the future development of devolution in the UK, based on the patterns to date.

A multinational union

The UK came into being (and then lost some of its territory) in a series of bilateral actions. England fully absorbed Wales in the mid-sixteenth century. Scotland and England entered into a union, forming the United Kingdom of Great Britain, in 1706-1707. The Act of Union between Great Britain and Ireland was passed in 1801, creating the United Kingdom of Great Britain and Ireland. The departure of most of Ireland in the 1920s led eventually to the adoption of a new name for the country, the United Kingdom of Great Britain and Northern Ireland. The terms of each incorporation differed, and throughout its history pronounced territorial variety of constitutional arrangements has characterised the UK.

These divergences have included:

- Different official religions (in England and Scotland), or no official religion at all (disestablishment took place in Ireland under the *Irish Church Act 1869*, and in Wales under the *Welsh Church Act 1914*);
- Multiple legal systems (for England and Wales; Scotland and [Northern] Ireland. There has also been discussion recently of fully establishing a separate legal jurisdiction for Wales);
- Different systems of local government; and
- Varied systems of ministerial and departmental responsibility for different territories within the UK.

Against this background, the asymmetry of present arrangements for the governance of the UK, though they may be novel in their particular form, are in keeping with longer

established patterns of general divergence. Furthermore, proposals for future change could contain within them the retention of diversity of some kind and at the same time be within long-term tendencies in the configuration of the UK constitution. Asymmetry is the norm. Perhaps the question is what type of asymmetry is to be adopted. This quality arises from underlying tensions in a state of such heterogeneous composition, and within which one unit, England, is far larger in population terms than the others combined. Yet centrifugal pressures are not always of equal force; they can both rise and recede. At times in the twentieth century – for instance, during the 1950s – nationalism in Scotland and Wales did not seem as dynamic as it did in other periods.

Devolution

Devolution (or 'Home Rule') has been a recurring item on the UK political agenda at least as far back as the First Home Rule Bill introduced by the then Prime Minister, William Gladstone, in 1886 (formally known as the *Government of Ireland Bill*). While the initial impetus came from Ireland, the idea developed that it might be appropriate to extend Home Rule to other parts of the UK ('Home Rule All Round'). There was significant political resistance to the idea of devolution in Westminster, and it was not implemented until 1921, and then only for Northern Ireland, under the *Government of Ireland Act 1920*. This system survived until it was suspended in 1972. Successive attempts to restore devolution to Northern Ireland failed, until the *Belfast (or 'Good Friday') Agreement* of 1998 made its reintroduction possible, with statutory enactment under the *Northern Ireland Act 1998*. In the meantime, partly as a consequence of the work of the Royal Commission on the Constitution, which reported in 1973, the Labour governments of 1974-1979 attempted, rather unenthusiastically, to introduce devolution to Wales and Scotland. But this effort was unsuccessful. It did not receive the required levels of support when referendums were held in the territories concerned. In Scotland, while there was a simple 'yes' majority, the requirement of support from 40 per cent of those who were able to vote was not met. In Wales, devolution was rejected outright.

After returning to office in 1997, Labour held referendums on devolution for Scotland and Wales, on the reintroduction of self government to Greater London, and on the Good Friday Agreement. All were approved. Acts of Parliament then facilitated devolved systems in all these territories. They have generally expanded their powers since this point (though devolution in Northern Ireland has been subject to prolonged suspension). However, Labour devolution policy was less successful in another area. The government intended – while not making the plan a priority – to introduce directly elected assemblies to the eight English administrative regions outside Greater London. However, the project met a decisive setback in 2004 when voters in the first referendum, in the North East region, rejected the plan. English devolution has now become a live issue once more under the present Conservative government with its development of deals with combined or individual local authorities.

A consideration of the historic development of devolution as a concept and practical reality suggests certain observations:

Devolution has been intrinsically bound up with political tension, controversy, division, and even violent conflict. It has arisen out of demands for more self-government, or as an attempt to avert nationalist movements that might threaten the union. In the case of Northern Ireland in 1921, the system ultimately introduced was an unintended and unforeseen culmination of a complex and violent interaction of forces. The idea of devolution when proposed has been criticised both by those who feel it is a dangerous erosion of the fabric of the UK, those who regard it as not providing sufficient autonomy, and those who regard it as an unwanted imposition. Once introduced, it has been criticised as somehow unfair to those parts of the country

that are not devolved; while at the same time others have campaigned for it to be extended.

These divisions have been cross-cutting. A number of political parties have tended not to be consistent, either at any given time, or over a period of time, in their approach to devolution. Labour, for instance, has been ambivalent. Traditionally a party with a strong class base, with an interest in social provision for all, territorialisation could appear to Labour as a distraction or even a threat. At the same time, its strong electoral sources of support in Scotland and Wales (and Northern England) could provide a motive to champion political autonomy in these areas, particularly as a means of negating rival parties promoting home rule or even independence. This conflicting dynamic meant that Labour eventually drove through a devolution programme, but that the process was tortuous. A lesson here is that devolution rarely comes about for entirely pure motives, and may be the outcome of some combination of principled action, opportunism, and chance.

Like Labour, the Conservative Party has also had a complex relationship with devolution. Under the leadership of Edward Heath in the 1960s and 1970s, for instance, the party was supportive of a change in Scotland, but never made progress with the idea. The attitude of nationalists in Scotland and Wales towards devolution is also variable. While independence might have been the ultimate ambition, it has often not been on the immediate horizon. Home rule might seem the best that was realistically obtainable, or potentially a step towards the final objective. It could also, of course, be a threat, that might remove any perceived need for independence. The Liberal Democrats and predecessor parties have tended to be more consistently supportive of devolution and even a federal UK, perhaps reflecting a Gladstonian heritage.

Devolution has often been driven by perceived problems in specific parts of the UK. The rise of the Home Rule concept arose specifically from unrest in Ireland. The idea that it might be applied to other parts of the UK tended to follow this initial proposition. From the point of view of pro-union parties, home rule or devolution has in part been a means of undercutting nationalism and support for independence. The apparent rise of nationalism in Wales and Scotland from the late 1960s helped force the possibility of devolution for those territories onto the agenda. At present, Scotland, in the wake of the 2014 Independence Referendum, is generating significant momentum. One response to the advances for the Scottish nationalist movement has been to enhance devolution to Scotland. But there have been other consequences, including the bringing forward of proposals for greater autonomy for Wales; the introduction of English Votes for English Laws in the Westminster Parliament; and moves towards English regional devolution.

A particular conclusion is possible regarding the sources of impetus for devolution. The importance of the focus on specific issues in certain areas has coloured devolution in particular ways. It has been viewed less as a system in its own right than a remedy to individual problems; and tended not to be approached as a comprehensive form of governance for the UK as a whole. England especially has been left out of the devolution discourse, or dealt with mainly as an afterthought. Given this realisation, the current position, in which different parts of the UK are subject to varying forms of devolution or none, is unsurprising. If this uneven outcome is deemed in some way a problem, then it may be advisable to consider an approach that is more holistic and less concerned with individual drivers.

Devolution has consistently raised challenging constitutional dilemmas. From the Gladstone era, the idea of devolving power to an elected assembly has generated

recurring debates. Is it compatible with the doctrine of parliamentary sovereignty? For some, the difficulty in reconciling devolution with the supremacy of the Westminster legislature was a strong argument against embarking on such a constitutional innovation. Devolution legislation has sometimes included provisions asserting its continued right to legislate how it sees fit. In retaining this theoretical right, Parliament could be seen as having remained ‘sovereign’. But the practical reality is different. During its half century of self-government, Northern Ireland was left to run its own affairs when at times parliamentary intervention might have been advisable, and was legally permissible. Similarly, a strong perceptual barrier has developed against the idea that Parliament would deploy its ‘sovereignty’ to tamper with the devolved settlements or intervene arbitrarily in devolved business. Today, both the *Scotland Bill* and the *Draft Wales Bill* propose placing on a statutory basis the principle the legislatures and executives of both nations are ‘permanent’; and that the UK Parliament will not ‘normally’ use its power to legislate in areas that are devolved. In theory, Parliament could ignore or expressly repeal these provisions. But it is unlikely to do so (though arguments may loom in relation to the Human Rights Act and European Union). Aside from the legal niceties, those who have expressed the view over the years that devolution would compromise parliamentary sovereignty may have been right. The emergence of devolution as a component of the UK constitution since the 1880s has seen an important historic shift take place. Parliamentary sovereignty in its practical effect has changed radically, if it exists at all still in a meaningful sense.

Any consideration of the future of devolution should take the arguable wilting of parliamentary sovereignty into account. Devolved institutions, once created, have acquired a status that puts them beyond casual interference from the centre, providing their own protected spheres of operation. In this sense, it is important to approach the design of devolution carefully. Powers granted might not easily be removed; and the experience of Northern Ireland – admittedly an exceptional case in some ways – is that, whatever the merits of devolution, it is possible for it to provide excessive autonomy, leading to perceived abuses. Perhaps Northern Ireland provided an historic learning process. The need for full adherence to the European Convention on Human Rights is built into the contemporary statutory frameworks for devolution not only in Northern Ireland, but also Wales and Scotland. (They are also fully subject to European law.) Yet the future status of the Convention in UK law is uncertain. Furthermore, it might be that there are other areas, not directly provided for in the Convention, that should nonetheless be protected, such as universal access to defined standards of welfare provision. Otherwise there could be a risk of a majority group in a particular devolved territory removing protections from an underprivileged minority.

The impact on parliamentary sovereignty has not been the only constitutional discussion point arising from the prospect and practice of devolution. Many concerns that emerged in the ‘Home Rule’ era remain familiar. Recurring questions include: How will devolution be funded? How much fiscal discretion, if any, can appropriately be devolved? What are the consequences for the UK Parliament? Should MPs from devolved territories have full voting rights, even over matters which are no longer dealt with at Westminster? What is to be done about England? Can it be incorporated into a fuller system of devolution as a single unit, or does it need to be represented in regions? These complications have always been difficult to resolve. Gladstone struggled with many of them; so do contemporary politicians. It may be necessary to accept that neat solutions are not necessarily available.

Finally, devolution should not be considered in a constitutional vacuum. It often connects to other systemic issues. For instance, in 1910, when two General Elections gave the Irish Nationalists the balance of power in the House of Commons, Home Rule and House of Lords reform became interwoven. The Nationalist price for supporting a

Liberal government was self-government; and the Lords would inevitably use its veto to block such a measure. The need to curb the authority of the Lords therefore took on a heightened urgency for the Liberals. The outcome was both the *Parliament Act 1911*, used to force through over the Lords veto the *Government of Ireland Act 1914*, though war intervened and it was never implemented. In a later era, the rise of devolution since the 1960s took place as part of a more general tendency towards radical constitutional change. Membership since 1973 of what is now the European Union; the *Human Rights Act 1998*; the *Constitutional Reform Act 2005*; and the *Fixed-term Parliaments Act 2011* are just a few examples of measures that have far reaching consequences for the way in which we are governed, all of which have specific points of contact with the developing systems of devolution. Any consideration of the future of devolution should take into account this wider context of transformation.

Devolution and local government. Local government has ancient lineage in the UK. In England, it has origins stretching back to the Anglo-Saxon era, and it clearly predates Parliament. Yet like all other aspects of the English and then UK constitution, it became subject to the supposedly sovereign Parliament, which could in theory impose requirements upon it, restrict its authority and fiscal power, and even abolish or reorganise it. During the course of the twentieth century, the status of local government was progressively undermined as central government expanded its scope of activity. The relationship between devolution and local government is a subtle one. It is not always clear where devolution ends and localism begins. For instance, the Greater London Authority could be claimed as either form of government. During the 1960s and 1970s, the debate about devolution for Scotland and Wales was intertwined with discussions about arrangements for local government in both nations. Local government is a devolved matter in Wales, Scotland and Northern Ireland. There is reason to believe that the devolved institutions have removed power from the local level to bolster their own position. In England, a programme for regional devolution overlaps with efforts to expand the authority of local government. The present UK government programme for English devolution specifically utilises local authorities as units. Any consideration of the future of devolution, then, needs to carefully consider how it fits with local government, appreciate that the two tiers are distinct but associated.

The European dimension. A significant contextual change that has taken place between the conception of Home Rule and the appearance of more contemporary devolution programmes has been UK participation in European integration. However much discretion is afforded to sub-UK devolved units, they remain fully subject to European law. Indeed, much of the business of the devolved institutions is clearly bound up with EU competences. Yet, while the devolution *Memorandum of Understanding* has provided for consultation with the devolved executives, European policy remains the business of the UK central government. A further issue meriting consideration is that continued UK membership of the EU is not guaranteed. In this sense an overriding framework within which the contemporary devolution projects were devised and have operated might be called into doubt.

Devolution typologies

Past experience suggests a number of different ways of categorising options for devolution.

Powers: general

Powers have been key: which precisely to devolve, and how to do it. These decisions have varied widely according to cultural and historic tendencies, and political expediency. The outcomes may appear perverse. For instance, the Civil Service is devolved to Northern Ireland, but not Wales or Scotland. There are some functions,

such as foreign policy, intelligence, and international trade, that could not be transferred. Much else, it seems, may, or may not, be on offer. As discussed, there is little evidence of powers tending to be clawed back to the centre (though in the case of Northern Ireland, the whole system has been abolished or suspended). The position in Northern Ireland from 1921 onwards seems to have remained static, while the three devolved systems from the late 1990s have generally been dynamic in their expansion. When placed in comparative perspective, the powers on offer to Wales have tended to be the least of those available to the three Celtic territories, though this position is now possibly changing. The packages being provided at English regional level presently appear slight. This position could, however, change.

Fiscal powers

A perennial consideration when contemplating Home Rule and devolution has been taxation. Should fiscal powers be transferred at all? And if so, which fiscal powers? Should they include indirect taxes only (and which), or direct taxation – and if so, within what limits? And what are the implications for UK-level fiscal policy?

Already administratively devolved or newly-devolved powers

Devolution has frequently involved subjecting powers that were already devolved in an administrative sense to specific democratic accountability. The *Government of Wales Act 1998*, for instance, transferred powers from the Secretary of State for Wales, a member of the UK Cabinet subject to collective responsibility and accountable to the UK Parliament, to the National Assembly for Wales, directly elected by voters in Wales. But devolution can also transfer powers not previously applicable in differential form to the territory concerned. For instance, the Scottish Parliament at the outset had a limited tax-varying power (though it did not utilise it), that is now being expanded.

Already defined or newly-created territorial units

Sometimes devolution has taken place to long established and accepted territorial units, such as the nations of Wales and Scotland. By contrast, devolution to Northern Ireland arose from a scheme to partition the island of Ireland based on the Province of Ulster, but not including all of it. The regions that the previous Labour governments thought might be a vehicle for English devolution were preexisting to some extent as administrative entities, but were criticised as relatively recent, arbitrary creations. Among the present round of devolved entities in England, some involve long-existing territories, such as Cornwall. Others may have some kind of clear central identity, such as Manchester, but their full boundaries may involve some inclusions that seem anomalous. It seems that any further extension of regional devolution across England is likely to utilise at least some units that may appear incongruous or artificial. However, it could be argued that history in a longer-term sense shows that everything has a beginning, and entrenched identities can develop over time.

Positive or negative definition of devolved powers

Sometimes models for devolution have positively defined those powers to be transferred. In other words, the devolved institutions would be permitted only to exercise those authorities that are specifically provided to them. This approach applied to the devolved systems contemplated for Wales and Scotland in the 1970s. Another means of defining powers is to enunciate those that are reserved at UK level, with all other activities being, by implication, devolved. This latter model is regarded as providing greater scope for action. It was used for the current system of Scottish devolution, for instance, from the outset; and is now proposed for Wales under the *Draft Wales Bill*.

Primary legislative or delegated powers

Another choice taken with respect to devolution is whether it should involve institutions that are able to issue primary legislation, in effect similar to Acts of Parliament (though potentially more amenable to judicial annulment); or simply wielding the equivalent to delegated powers possessed by ministers at UK level. From the 1920s to the 1970s, the Northern Ireland Parliament was a law-making body. In the 1970s, it was anticipated that Scotland would be provided with legislative powers, but Wales would not. Of the three devolved systems set up under Labour from the late 1990s, Northern Ireland and Scotland had primary law-making assemblies, while Wales did not. However, under the *Government of Wales Act 2006*, the National Assembly for Wales acquired the ability to issue primary legislation. English devolution, as presently conceived, does not seem to involve the introduction of primary law making power. If parity with the other devolved systems is sought, it will not be achieved without acquiring the ability for English devolved territories to issue their own primary legislation. However, some observers argue that legal divergence between different regions of England would be undesirable.

Electoral systems

The electoral system chosen for devolved assemblies has been crucial, since it has impacted upon the character of the polities themselves. Power-sharing may be made more likely, for example, or one group may enjoy prolonged or even permanent dominance. Originally, a proportional system was used in elections to the Northern Ireland Parliament, but in 1929 it introduced First Past the Post (FPTP). The schemes of devolution proposed for Scotland and Wales in the 1970s were intended, somewhat controversially, to include FPTP. Scotland and Wales today use slightly different variants on the Alternative Member System, while in Northern Ireland there is the Single Transferable Vote, combined with a formula to compel cross-community power sharing in the executive. However, the exact outcomes of the systems used are hard to predict. For instance, one motive for the system used in Scotland is believed to have been that it could prevent the nationalists obtaining a majority in the Scottish Parliament – a feat that was achieved regardless in 2011.

Constitutional authorisation

Does devolution require a referendums to be held, and if so when? These questions are important, because they relate to the idea of constitutional legitimisation of a form of government. They also engage the issue of whether devolution needs demonstrably to be demand-led from below, or whether it is possible for representative institutions to impose it without using direct democracy instruments to justify such an action. No referendum was used in Northern Ireland when it first obtained a Parliament in the 1920s. When Labour first brought forward proposals for devolution in the 1970s, it did not intend to use plebiscites. However, political resistance led to a referendum requirement being introduced, as well as a stipulation that 40 per cent of all who were able to vote should support the ‘yes’ case. As noted above, in 1979, in Wales, the ‘no’ campaign won decisively; while in Scotland, ‘yes’ obtained a majority, but failed to meet the 40 per cent minimum.

When Labour returned to office in 1997, it held referendums in Wales and Scotland – and subsequently on the 1998 Good Friday agreement (and on the Greater London Authority). The vote in Scotland included a second question on tax varying powers. Simply majorities were, on these occasions, deemed sufficient. The referendums were held before the introduction of devolution legislation, rather than after the passing of Acts, as had happened in the 1970s. In each case a ‘yes’ vote was achieved, though in Wales by the narrowest of margins. Subsequently, an expansion of the legislative powers of the Assembly was deemed under the *Government of Wales Act 2006* to require a further referendum, held and won in 2011. Yet expansions in Scottish

devolution have not required referendums (unless the independence referendum of 2014 is required as in practice a choice between independence or more devolution).

Regional devolution in England under Labour was considered to require approval through referendums, leading to the North East defeat of 2004. So too was the introduction of city mayors, until recently. But the present programme of English devolution is not subject to referendums (and nor was the introduction of Police and Crime commissioners in 2012). In short, it is difficult to discern any clear rationale over time as to whether and when devolution should be subject to referendums. It could, however, be argued that having held a referendum on the establishment of a particular set of institutions, it becomes harder to envisage their abolition without a similar form of consent.

Conclusion: an end game?

Home Rule and devolution have often been driven by area-specific concerns and their execution has been piecemeal. However, for almost as long the concept of devolution has existed, there has been a related debate about whether it might be introduced in a more comprehensive form. A term employed early on was 'Home Rule all round'. The UK, though it has never introduced a fully federal constitution of its own, has a powerful federal intellectual tradition and has influenced the introduction of federal constitutions to countries across the globe. In recent decades, there has been an increase of interest in the idea of a written constitution for the UK, and those proposing such a text often argue that it should provide for a federal system. Within it, 'states' (or their equivalent) would cover the whole territory of the UK, possibly with a presence in the second chamber of the UK 'federal' Parliament. In many ways, the UK is closer to federalism than it has ever been, with devolution introduced to Wales, Scotland, Northern Ireland, Great London, and soon other regions parts of England. English Votes for English Laws creates an English Parliament of a sort, though within the UK House of Commons. Moreover, the Human Rights Act resembles a federal Bill of Rights, and the UK Supreme Court, operative since 2009, a federal Supreme Court.

However, the idea of a federal UK, though long vaunted, has not yet fully come about. One of the barriers, perhaps the most significant, to its realisation has been England. It has never been quite clear how a nation that accounts for the overwhelming majority of the UK population can be incorporated into a stable federal system. If it is to be included in regions, then which regions? And does England want federalism at all, if it is simply a means of balancing demands for more autonomy elsewhere? Whether these questions can or need to be answered as part of the process of devolution across the UK remains a contested matter. Another, less formulaic pattern of development may take place, whereby parts of England obtain some autonomy, which then becomes politically entrenched. There might then be demands for the expansion of devolved power where it has already been introduced, and its extension to areas where it has not yet been established. Certainly, this pattern seems to have applied to devolution since the 1990s. It could be compatible with, but need not necessarily lead on to, the eventual establishment of a federal UK.

Further reading:

Vernon Bogdanor, *Devolution in the United Kingdom* (2001)

Michael Burgess, *The British Tradition of Federalism* (2012)

Russell Deacon, *Devolution in the United Kingdom* (2012)

Lord Hailsham, *Elective Dictatorship* (1976)

Richard Kelly, *English Votes for English Laws* (London, House of Commons Library, 2015)

James Mitchell, *Devolution in the UK* (2011)

Royal Commission on the Constitution, 1969-1973, Cmnd. 5460 (1973)

Mark Sandford, *Devolution to local government in England* (London, House of Commons Library, 2016)