

Devolution and Public Policy

Devolution and Policy Innovation

Devolution has clearly opened up new scope for policy innovation. Each part of the UK now has new policies, introduced since 1999, which have built on the pattern of differentiated policy provision that existed before devolution. Each part of the UK now also has its own policy *processes*, in some cases now open to new participants, in others operating through new institutional structures, all likely to produce further-reaching innovations as time passes.

The headline policy divergences introduced since 1999 by the devolved administrations clearly represent significant change (for examples see Box 1). But much divergence has also arisen from the decisions of devolved administrations not to replicate policy changes introduced by the UK government which apply in England. In other words *England* has diverged on health service indicators like waiting lists and hospital league tables, on the use of private finance in public services, and on the 'choice' agendas which underlie policy on league tables and the promotion of diversity of providers in English education.

Box 1: New policies introduced by the devolved administrations since 1999

Scotland

Free long-term care for the elderly; abolition of up-front university tuition fees; 'one-stop-shop' Public Sector Ombudsman; proportional representation in local government elections; ban on smoking in public places

Wales

UK's first Children's Commissioner; alignment of NHS organisation with local government boundaries, facilitating development of a preventive public health strategy; phased policy to abolish NHS prescription charges; absorption of quangos into the National Assembly

Northern Ireland

Comprehensive equality policy; free public transport for the elderly; abolition of 11+ examination; review of public administration with proposals for local government reform

On a number of these issues what has happened in Scotland and Wales is an affirmation of the status quo ante, in Wales expressed robustly as a commitment to traditional Labour values of universalism (with the First Minister Rhodri Morgan seeking 'clear red water' between it and the UK Labour government), in Scotland rather more cautiously. Perhaps contrary to early expectations, it is England, via Westminster, that has become the pioneer of policy experimentation in post-devolution UK.

Forces for Policy Divergence

There are strong grounds for expecting further policy innovation on the part of the devolved administration in the coming years. These lie both in the nature of the devolution settlement, but also in the innovations of policy process devolution has fostered.

The Devolution Settlement

The devolution settlements around the UK are highly permissive of policy divergence. There is an element of path dependency here, as divergences were common under the territorially differentiated administration of UK policy before devolution. But the scope for divergence is bigger now:

- In Scotland and (with different terminology) Northern Ireland, devolution is based on the **separation of powers** between reserved and devolved functions. There are few

equivalents of the categories of framework legislation (in which state-level parliaments set common or minimum standards) or concurrent legislation (areas in which state-level and devolved legislatures can both make laws, but where state-level laws take precedence under specified conditions) frequently used in other decentralised systems, which allow central government to set statewide policy standards. In the Welsh case such possibilities do exist, but even there the tendency under the existing devolution settlement, and more so in the changes proposed in the 2005 Government of Wales Bill, is for the National Assembly to exercise its powers with growing discretion and declining Westminster regulation.

- **Intergovernmental coordination** between central and devolved governments in the UK is, comparatively speaking, weakly institutionalised. There is little strategic policy discussion at senior official or ministerial levels of the balance of UK-wide and devolved objectives in, say, health policy or transport. Asymmetrical devolution also encourages bilateral rather than multilateral (ie UK-wide) discussion of policy ideas and objectives, so that UK-Scottish discussions may have different outcomes than UK-Welsh discussions.
- The **financial settlement** underpinning devolution is unusually, perhaps uniquely permissive. Rooted in baseline figures established in the period 1979-1982, and adjusted since by the Barnett formula, funding for the devolved administrations is awarded by the UK Treasury (with only marginal exceptions) as an unconditional block grant. Within the block, the devolved administrations are not tied to a particular spending pattern, can switch across budget headings at will, and are not bound to deliver UK-wide policy objectives. Elsewhere it is normal for at least some substantial part of the funding for devolved or regional governments to be allocated conditionally by state-level governments in order to meet statewide objectives. But the UK government has no mechanism within fields covered by the block to 'buy' its way into devolved autonomy to meet such objectives.

The Devolved Policy Process

- **Elections** to the devolved legislatures are not contested in the same ways as at Westminster. None of the Britain-wide parties which dominate at Westminster stand in Northern Ireland. And the Britain-wide parties are supplemented in Scotland and Wales by nationalist parties and others, in part encouraged by a different voting system. Differences in patterns of party competition logically enough tend to produce differences of politics. At Westminster the main competition is between left and right. In Scotland and Wales the nationalists pull the terms of party competition to the left of centre. Different voting systems also produce different types of government. Westminster's single party majorities are paralleled by what is likely to be permanent coalition government in Scotland and a finely balanced situation in Wales. Scottish and Welsh governments need in other words to be more inclusive, importing into government some of the left-leaning dynamic of party competition there. Significantly some of the main examples of policy variation so far in Scotland – abolition of up-front tuition fees, or the introduction of proportional representation in local government elections from 2007 – have reflected the policy commitments of the junior coalition partner, the Liberal Democrats.
- **Policy communities** are recalibrating since devolution, with some interest groups with a UK-wide organisational structure now working in more territorially differentiated ways, and with more emerging in Scotland-only (or Wales-only) guises. The emphasis in the devolution debates on civic participation has invigorated civil society

organisations in the devolved territories. Institutional changes redefine the terms of participation in policy-making: the NHS has been reorganised in Wales; across the UK new institutions for regional economic development; the Review on Public Administration in Northern Ireland is set to reshape the way local government and quangos contribute to policy delivery. In these ways territorially bounded policy structures and debates emerge which may, or may not, share the same concerns as those centred around the Westminster parliament. For example the professional associations retain a leading role in defining health care policy in Scotland, but are less central in England, while local authorities play a fuller role in public health strategies in Wales than elsewhere in the UK.

Forces for Policy Convergence

The institutional forms of devolution and the establishment of territorially bounded democratic processes favour policy divergence. There are of course countervailing forces, including:

- Though **intergovernmental linkages** are weakly institutionalised, they are there, operating through coordination among officials with related functions in devolved and UK administrations, and through the territorial Secretaries of State at the UK who (in the official job description) act as mediation points between devolved and UK institutions. In the Scottish and Welsh cases that mediation has so far been as much about coordination within the Labour Party as between governments. Discussions among officials and within the Labour Party are intransparent, their subject matter and impact unclear, and their content unaccountable to either UK-level or devolved democratic processes.
- Though devolved and reserved powers are generally separated, there are of course **overlaps of competence**, for example in housing policy, where housing benefit is part of the UK-level function of social security, but policies on provision of social housing are devolved. There are myriad other such overlaps, especially at the interface of social security with other policies (for example on social exclusion, early years/childcare, long term care for the elderly, and active labour market policy). UK social security rules and benefits in these circumstances set boundaries to the options of devolved administrations and thus maintain UK-wide floor standards.
- In some circumstances devolved administrations seek to maintain common UK-wide standards even in their fields of competence. The **Sewel convention** has for example been used frequently in Scotland as a means of ensuring consistency of legislation in some fields between Scottish and Westminster jurisdictions.
- The **European Union** has been a force for convergence, either by setting common regulatory frameworks which have to be applied across the UK, or, perhaps more interestingly, by imposing UK-wide discipline on UK and devolved governments (a state can have only one voice in EU-level negotiations, even when the subject at hand falls under devolved competence). Unlike in other fields a quite systematic practice of UK-devolved inter-governmental coordination on EU matters has emerged. It is remarkable that only where the external rationale of defining a single UK policy for EU negotiations do we see systematic internal coordination between UK governments.

England as a Force for Convergence

But perhaps the strongest force for convergence across the UK is England. The UK is an extraordinarily lopsided state, with the preponderant part (England) governed centrally and the peripheral parts (Scotland, Wales, Northern Ireland) self-governing in most fields of domestic policy. England makes up around 84 per cent of the UK's population and over 85 per cent of GDP. As long as the UK retains a single economic market, a single welfare state (at least in terms of social security, but also in popular imagery in health), and a single internal security area, it is inevitable that decisions taken for the biggest part of those single areas will have impacts on the smaller parts (Box 2).

Box 2: Examples of England's impact on devolved policy

- The agenda for the 2005 review of higher education funding in Wales was driven by the need for Welsh universities to be able to compete on the same terms as set in Westminster policy on their English counterparts.
- The last UK election produced intensive debates about health policy in Scotland and Wales (which are devolved issues not at stake in UK elections), in particular about the 'failure' of the NHS in Scotland and Wales to meet targets set in Whitehall for the NHS in England!
- The Scottish Executive is committed to an immigration policy to counter population decline, but is dependent on a UK government reluctant to allow much territorial flexibility to a UK immigration policy increasingly understood in policy debates in England as a matter of internal security not population replacement.

Public Policy and Devolution: Unresolved Issues

1. There are, in the UK as elsewhere, sets of factors which support territorial policy divergence, balanced by others which support convergence. The way that a balance between those factors is struck in the UK lacks clear reference points. It is much less institutionalised, and much less the result of a transparent debate about the relative merits of statewide versus devolved policy agendas, than in other places.
2. That approach to coordination of policy agendas may prove problematic when governments led by different parties are in place in Westminster and in Scotland and Wales and introduce partisan considerations into intergovernmental relations.
3. The absence of reference points has implications for the quality of citizenship across the UK, which depends at least in part on the maintenance of common, or minimum standards of policy provision irrespective of geographical location. When does policy divergence – whether led by the devolved administrations of the UK government acting for England – begin to eat at the substance of shared citizenship?
4. The absence of a systematic approach to coordination of policy agendas limits the scope for policy learning. That scope is at its most limited in Whitehall, where some (units in some) departments still appear to show little recognition that devolution has opened up new scope for policy innovation and learning across the jurisdictions of the UK.

[IN SMALL PRINT AT THE FOOT OF THE PAGE] This insert was written with the help of John Adams