

## 29. Policy convergence and divergence in Scotland under devolution

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### **Policy convergence and divergence**

Public policy is a notoriously slippery concept, and a difficult one to operationalise and measure. We need to ask whether we are referring to the intentions of the policy maker, the actions, or the effects. Stated goals of policy may mask a hidden agenda. Goals may be contradictory, answering to varied and conflicting pressures or may shift over time. Policy as framed by government at the centre may be radically altered in the course of implementation. Policies that look the same may have different beneficiaries due to differences in delivery mechanisms. Stated policies that miss their target but hit another one may be claimed as a success. It is difficult to distinguish differences in policy from differences in degrees of a given policy. For the purposes of this paper, policy is limited to the stated aims of policy makers and an examination of the legislative and administrative measures put in place to realize them. This may understate or overstate the degree of policy differentiation under devolution, but the question of policy impact is for later research.

The aim is to assess the potential for, and degree of, policy convergence and divergence in Scotland after devolution. Divergence is measured by reference to two comparators: Scottish policy before devolution; and contemporary policy pursued in England. The starting point is a previous analysis that, under the old system of administrative devolution, the Scottish Office had a very limited ability to diverge from the Whitehall line on policy issues, but was able to use Scottish administrative instruments to affect the details of delivery (Midwinter, Keating and Mitchell, 1991; Keating, 2001). On the other hand, the weakness of local political control in Scotland meant that government was in many ways freer than it was in England to impose central policies, in collaboration with those Scottish elites who had gained a niche in the system. Devolution thus represents a twofold shift in influence: from London to Edinburgh; and within Scotland from the old policy networks to a broader and more pluralist policy community.

### **Context**

Devolution has taken place within a complex, modern welfare state embedded in the European Union and a global free trading order, which

imposes considerable constraints on the degree of differentiation that might be possible. Firstly, the UK single market limits actions that might constrain the free movement of goods and services, or market competition. Secondly, the welfare state settlement is based on notions of universal entitlement irrespective of place of residence. This is both a political principle derived from the notion of social citizenship of the United Kingdom, and a practical matter of controlling 'welfare migration' in which individuals move in search of better services, penalizing jurisdictions that offer more generous terms. Thirdly, there is a common security area, limiting the extent to which law and order and policing matters can in practice diverge within Great Britain (excluding Northern Ireland). These factors would suggest that differences in policy are likely to be matters of degree and scope, rather than radically different conceptions of the main policy fields of economic management, welfare and security.

On the other hand, the modern state also shows tendencies to differentiation and complexity. Macroeconomic management may be a matter for the state, Europe and global trading regimes, but economic development and adaptation is increasingly seen as a local and regional matter, linked to the social and political structure of particular places and requiring refined and sensitive policies best managed by decentralized agencies. The broad principles of the welfare state may be consistent across the state, but policies for social inclusion are now seen as best handled in the local context, where particular conditions can be taken into account and policy instruments mixed and coordinated. Policies on law and order can similarly be localized in new ways of addressing questions of delinquency or treatment of offenders, even while the broad coverage of law is the same. All this suggests that policy divergence might be a matter of degree rather than nature, but that its scope should be greater under devolution.

### **Shared responsibilities and intergovernmental policy making**

Another key factor in determining the scope for divergence is the division of powers under the Scotland Act. Like other devolutionary and federal schemes, this produces three types of competence:

reserved, devolved and shared.<sup>1</sup> Powers devolved to Scotland are very extensive compared with most devolved or even federal systems, with the notable absence of fiscal autonomy. In most systems, the third category is quite large and is managed by negotiation between devolved or federated, and central or federal departments. Often the central level will pass framework laws within which the devolved units must operate. UK devolution has relatively few shared powers and there is an absence of framework laws over most policy fields. Economic development is an exception, with the Scottish Executive operating within broad parameters set by Westminster and Brussels.

On the other hand, there is a large degree of interdependency between devolved and reserved powers. Transport policy is divided in a complicated way. Initially, railways and air transport were reserved, since it was thought that these affected the UK as a whole, while road transport was devolved. Later the scheme was revised somewhat to give the Scottish Executive responsibility for franchises and subsidies for those rail services contained within Scotland, enabling it to plan rail and road policy together but raising problems about the relationship between rail services (devolved) and rail regulation and the network (reserved). Inevitably, the Scottish Executive has taken an interest in air transport and airports, although only the airports in the Highlands and Islands (regarded as an essential social service) are devolved. Welfare state matters are divided between the Scottish and UK levels, with Scotland largely responsible for social services and London for cash payments, but the interface between the two creates areas of shared responsibility. Further interdependencies are created by new, transversal policy initiatives, responses to new problems or new ways of framing social questions. So, as labour market policy has been linked to welfare policy and to social services in the effort to get people into work, both levels of government have had to work together. The broader social inclusion agenda, the focus on rural affairs, or the theme of 'environmental justice' are other transversal policy issues, requiring a co-ordinated approach not only across Scottish Executive departments but among the various levels of government, European, UK, Scottish and local, as well as the voluntary and private sectors. There is also a general concern, reflected in the devolution White Papers and legislation, that devolved governments should not upset UK policies in reserved areas and adhere to European regulations.

This imposes a large degree of intergovernmental policy making. While this is common to multilevel systems of government, the UK again stands out, in its degree of asymmetry, and the fact that the UK government doubles up as the domestic government of England. Whitehall departments are sometimes predominantly English, where their responsibilities

correspond to devolved powers in Scotland, Wales and Northern Ireland, for example the Department for Education and Skills or the Department of Health; although in legislative matters, these are English and Welsh. In other cases, they are predominantly UK departments, like the Foreign Office, Department of Work and Pensions or Department of Defence. A third category is mixed, with some functions applying only in England, others in England and Wales, others to Great Britain and yet others to the United Kingdom; a prime example is the Home Office. The result can be seen from two perspectives. We could say that, in policy fields like education or agriculture, there is no 'central government', merely a group of territorial departments for England, Scotland, Wales and Northern Ireland, co-ordinating where necessary on common issues. Alternatively, we could argue that there is a centre and that it is England, whose government and departments dominate and lead the policy process, to which the other administrations must adapt. There is in fact some truth in both perspectives.<sup>2</sup>

Intergovernmental policy making is further complicated by the European Union, which has responsibilities corresponding in many cases to those devolved to Scotland. This imposes a two-fold loss of power, as Brussels regulates for devolved matters, and as the UK government re-enters devolved fields to present a single negotiating position in the Council of Ministers. Again, this is found in other federal and devolved systems, where the response has been to secure guarantees for the lower tier, both 'upstream' in the making of EU policy, and 'downstream' in its application. German and Austrian Länder and Belgian regions and communities have guaranteed rights of participation and even to lead their national delegations to the Council of Ministers. In the Convention on the Future of Europe, the regions gained a subsidiarity clause intended to protect their competences from undue European intrusion. Scotland has relied on a non-statutory Concordat and on political relations between the Scottish Executive and the Westminster government (Bulmer et al., 2002). In fact, the position has been carried over largely unchanged from the days of the Scottish Office and the Scottish line so far has been to cleave closely to the UK position, remaining an insider to the UK networks and depending on the weight of the United Kingdom to protect Scottish interests. In the future, however, divergences may emerge between the UK and the Scottish position, over issues like fisheries and reform of the Common Agricultural Policy.<sup>3</sup> There are also unresolved issues over how far Scotland would be able to apply the scope for variation in implementation of EU regulations that is given to 'national' governments in order to create variation within the United Kingdom. There is some interest in exploring the idea of tripartite partnerships which the Commission is pioneering to give regions greater leeway in adapting European policies.

### **Policy communities**

Scotland has always had its own interest groups, some of which emerged separately by historical accident, others in response to administrative devolution and need for interlocutors with the Scottish Office. Devolution has seen a strengthening of the Scottish level of UK groups, and a general recognition of formal autonomy corresponding to the division of competences within government. There has also been some increase in horizontal contact among groups within Scotland to form territorial policy communities in areas like economic development, social exclusion or rural policy. Interest groups still differ in the prime focus of their lobbying. Big business, often externally owned, operating in global markets and regulated at UK and European levels, still privileges its relationships with London, while small businesses are more focused on the Scottish level and dependent on the public goods produced by the devolved administration. Trade unions operate on both levels while the Scottish Trades Union Congress has always been quite separate from the British TUC. Since devolution, the Scottish level of policy making has been reinforced in some unions, and the STUC has established a clearer conception of its role, concentrating on devolved matters while leaving reserved matters to the TUC. The voluntary sector has expanded following devolution, and become more involved in policy matters, encouraged by the presence of the Scottish Parliament and the new mechanisms of consultation. This has increased the amount of interest group activity in Scotland and its pluralism. One measure is the 54 groups that produced their own manifesto of items to be addressed by the parties at the 2003 Scottish elections.

Devolution has strengthened the Scottish political arena, since the Scottish Parliament and Executive have such substantial powers that no groups can afford to ignore them entirely or by-pass them by going straight to London. This makes a contrast with the English regions, where participation in the regional machinery is voluntary and groups that are discontented can walk away. In turn, this has produced a social dialogue in Scotland, in which groups, being in the same political arena, must address each other's concerns and gain a degree of political legitimacy. This effect is not to be exaggerated. Scotland is still not the level at which the main social compromises are made, and big business is still much more UK-oriented than is the voluntary sector, but it does affect the political agenda in Scotland.

There are still big differences in the extent to which policy communities operate at UK or Scottish levels. Primary and secondary education are debated within a Scottish framework among Scottish actors, as was largely the case before devolution. Big business is used to operating on a UK basis and still does.

Universities, on the other hand, are used to operating in a highly articulated UK policy community, but have to adapt to a new dispensation. The 2003 White Paper on Higher Education in England has become a reference point for debate within Scotland, although it does not apply there. Where groups operate on both sides of the border, there is also something of an imitation effect, as those who complain about being treated worse demand parity.<sup>4</sup> Business groups have regularly complained about higher business rates in Scotland (although a proper comparison would have to take into account differences in rateable value).

Interest groups in all sectors have found it difficult to make the transition from lobbying for a Scottish share of whatever policy was going to formulating policy themselves. This has required a change in mentality but also additional resources. While many of them have boosted their Scottish research and policy making capacity, it still lags behind what is needed. There has also been a phase of disenchantment following the euphoria and high expectations of devolution. Much was made before 1999 of a 'new politics' in Scotland, with a greater role for participation, for social movements and for consensus and less for the parties and the old political class. In its more naïve versions, this seemed to postulate a form of non-politics, in which consensus would naturally emerge from deliberation and everybody would win. The rough reality of politics proved something of a shock. The voluntary sector also suffered something of a setback after 2002, with the return to influence of Labour's local government notables, who are competing for the same political ground as well as for control over local service delivery.

### **Public opinion**

Most of the evidence gathered on public opinion in Scotland suggests a similar pattern to that in England, although with a small but persistent tendency in Scotland to prefer more public service provision, a larger role for the state and more redistribution (Curtice et al., 2002). There is a marked difference in education, with Scottish voters much more inclined towards comprehensive schooling. This extends to the professions, where there also seems to be a greater commitment within the public sector in Scotland to universal public services – this includes among the medical profession.<sup>5</sup>

### **Political parties**

A strong factor for policy uniformity has been the presence in both London and Edinburgh of Labour-dominated administrations. It is not that London imposes policy from the centre, although UK some politicians do take a lot of interest in what is happening in Scotland and discourage innovations, like free personal care for the elderly or the abolition of up-front university tuition fees, which might

provoke matching demands in England. It is more that Labour politicians in both jurisdictions share broadly the same ideas and party loyalties. It is also a matter of strategy. Henry McLeish, in his brief tenure, was anxious to put a personal stamp on policy, which he did through free personal care for the elderly and signing the Declaration of Flanders, with the other 'constitutional regions' demanding a greater role in Europe. Jack McConnell, on the other hand, has cleaved more closely to London, seeking to present a uniform Labour policy set and preventing ministers making any criticisms of English or reserved policy matters. The scope for choice here is evident in the comparison with Rhodri Morgan, who has been unabashed in proclaiming his dissent from aspects of New Labour policy and his intention to limit their impact in Wales. Again McConnell's calculation seems to be that he will get more from playing the loyal partner with London, and that any obvious difference would play into the hands of the nationalists. As a result, even where Scotland has diverged from England, as on public service delivery, there has been no effort to highlight the difference.

One big difference with England is the pattern of party competition, across the two key dimensions of left-right and nationalism. In England, the centre as embodied in New Labour and the Liberal Democrats has faced competition from the right and from a British nationalism, both embodied in the Conservative Party. New political movements in the last few years have been even further to the British nationalist right. In Scotland, the centre parties have faced weak competition from moderate Conservatives and strong competition from the Scottish Nationalists, coming from the left and the from the anti-unionist side. The two newer parties whose advance marked the 2003 elections are both to the left and to the Scottish nationalist side of Labour. Unlike in England, there is no serious Eurosceptic challenge in Scotland. All this has helped frame public debate in Scotland somewhat to the left of that in England and shape the political agenda accordingly.

Coalition politics has also affected policy in Scotland. The Liberal Democrats were critical in the abolition of up-front tuition fees and free personal care, freedom of information and law and order (see below). They are also single-handedly responsible for the promise to introduce proportional representation in local government. This is not just a policy in itself but one that promises dynamic effects in further increasing political competition in Scotland and undermining a key power base of the old Labour Party.

### **Policy capacity**

Most Scottish Office departments were not there to make policy but to apply it and have had to strengthen their policy capacity, starting from

different levels. The Executive also inherited a very uneven research base. There was a substantial effort in housing and education and an agricultural research budget out of all proportion to Scotland's share of UK agriculture, but big gaps in other fields. There has been some new capacity within departments, but it does not always seem sensible simply to duplicate what is being done in Whitehall if there is no demand for a distinct policy. Research has been rationalized with a stronger central research department and a link to the central Policy Unit. Policy innovation also comes through local government practice and from interest groups. Departments, however, still lack the knowledge base to formulate new approaches, for example in rural policy, where there is considerable scope for divergence.

Much innovation in UK government has come recently from the various policy units at 10 Downing Street and from the Treasury, and the Scottish Executive is involved in these initiatives and experiments (Parry, 2001). On the other hand, Adams and Robinson (2002) exaggerate in describing the Treasury as the new centre for domestic policy, since these initiatives tend to be ad hoc and to involve new ideas rather than mainstream policy.

### **Finance**

Scotland's financial settlement is very unusual in international comparison, since it combines a transfer accounting for the whole of the Executive's own spending with complete freedom of allocation. What is also unusual is that changes in the block each year are calculated by reference to functional allocations for England, but that these have no binding affect on the functional allocations once the money comes to Scotland. It might be expected that interest groups would be alert to this, and insist on parity with England.<sup>6</sup> There is a little evidence for this. In 2001, for example, the Chancellor announced additional money for health in England, between spending rounds. The Scottish Executive felt obliged to pledge that the Scottish share generated under the Barnett formula would also go to health; but later noted that this did not necessarily mean the same priorities within health. It is not, however, possible for groups to demand this kind of matching across the range of public services, since the information does not exist to make the comparisons. In the first place, the functional headings in the Scottish budget are different. Second, reporting practices differ.<sup>7</sup> Third, a great deal of expenditure is passed on to local government and this is no longer reported under functional headings, merely as a local government block.

Block funding does, however, constrain Scottish discretion in other ways. As the Scottish Executive does not have borrowing power, it would be forced

to use the Private Finance Initiative for capital projects even if it did not want to, or try to fund them all out of current revenue (the Welsh Assembly Government, opposed to PFI, has this problem). Block funding also prevents Scotland from making a choice between low taxation and high spending, a key issue in any modern democracy, or between financing services from fees or taxes. This latter promises to become a real problem if the government proceeds with its proposal to finance English universities partly from fees. The Scottish Executive is pledged not to follow suit, but would not be able to raise the equivalent money from taxation. Should a future UK government introduce fees more widely, for example in health, this question could become acute.

### **Divergence in practice**

At the start of this paper, I indicated that radical policy divergence under devolution was constrained by contextual and political factors. There was scope, however, for shaping the way in which policy was delivered and that this was greater than under the old Scottish Office. As I also indicated, it is difficult to draw a sharp line between differences in policy and differences in emphasis and priorities. There is also pressure for divergence from party competition and from emerging Scottish policy communities. On the other hand, the UK departments remain a powerful force of policy ideas, UK policy communities are strong, the policy agenda is often set at the centre and there is a consequent policy drag from England.

The greatest policy divergence concerns modes of public service delivery. New Labour in both Scotland and England is committed to the welfare state and services largely free at the point of use, and both have been influenced by New Public Management ideas. Labour in England, however, has moved furthest away from the ideal of uniform, public provided services towards differentiation, internal markets and mixed models of service delivery. This was apparent in the health service from an early stage (Woods, 2002). Scotland has not reintroduced internal market elements as in England, and there are no plans for foundation hospitals. Scotland has placed more emphasis on local government as a service provider and less on the voluntary sector. There is an explicit commitment to comprehensive education, largely abandoned in England. This reflects the pattern of public opinion in Scotland, although it would be a mistake to read public policy directly from mass opinion. Rather party competition and the structure of policy communities in Scotland have sustained a consensus around these themes, drawing on public opinion and shaping it in turn.

Scotland has also been less inclined to 'targetry', the setting of detailed targets for bits of public services, a practice long criticized for giving perverse incentives. It is not that the Scottish Executive does not have targets, but they are less in number and

less detailed. One reason for this is no doubt the inability of the Treasury to impose Public Service Agreements on Scottish departments.

Another broad difference concerns law and order. Care has been taken to ensure that criminals cannot take advantages of lacunae in Scottish and English law, sometimes with Sewel resolutions allowing Westminster to seal the gaps. On the other hand, on matters of criminal procedure and law, Scotland has been distinctly less authoritarian than England has been under Straw and Blunkett. Coalition politics is largely responsible here, as the Justice Portfolio was held by Jim Wallace of the Liberal Democrats, who clashed with Jack McConnell during the 2003 election campaign over proposals to gaol parents of delinquent children. In the coalition agreement after the election, the proposal was watered down almost out of existence. Labour did, however, take the portfolio after the election, giving them scope to introduce more authoritarian measures.

More attention, however, has been given to explicit decisions to depart from the English line on three issues. One was the decision to implement the recommendations of the Sutherland Report on free personal care for the elderly. This caused considerable problems with London because of the precedent it set, and for breaking with the uniform welfare state provisions that had hitherto prevailed. In practice, the difference with England may not be as great as trumpeted, since it all comes to down to exactly how much money is available to provide exactly which services. A second issue was the decision to abolish university tuition fees. Again the difference is muted since the fees were not abolished but postponed until after graduation; a much bigger challenge will be posed by the £3000 top-up fees now proposed in England, which Scotland has explicitly rejected in the coalition agreement of 2003. Both of these show how policy divergence is limited by the block funding system, since they both pose the issue that Scotland cannot actually decide under devolution – the extent to which services should be funded from taxation. So a compromise had to be found that was affordable within existing budgetary constraints. The third issue is Freedom of Information, where Liberal Democrat control of the relevant portfolio ensured a somewhat more liberal law. The differences are not dramatic, the most important hinging on a difference between a test of 'prejudice in England and 'seriously prejudice' in Scotland and whether the minister has the last say on whether information can be withheld in all circumstances, but they do exist. Ministerial and civil service pressure certainly watered down both acts.

A final set of policies concerns matters with no equivalent in England and here Scotland has been able to proceed on its own. The most important was the Land Reform Act, fulfilling historic ambitions of

the Labour and Liberal Parties. Land reform had been held up in the past not by England but by the weight of landowners within Scotland and their links into the old system. It is thus an example of power shifting within Scotland following devolution. Even with a sympathetic Labour government in London, it is unlikely that such a large and complex bill could have gained time at Westminster or survived guerrilla tactics in the Commons and the Lords.

Policy making in modern government is often an incremental process, punctuated by bold initiatives. There have been few bold initiatives in Scotland, and the present administration seems to disinclined to produce many. On the other hand, there has been a degree of innovation within the devolved governments, some of which has been imitated by others, producing divergence followed by reconvergence. The idea of a Children's Commissioner, pioneered in Wales, is an example. The underlying trend of public policy and provision is, however, diverging slowly but surely as Scotland (and Wales) retain the traditional social democratic model of public service delivery and the differing weight of various groups within policy fields is felt. It may be that England is diverging from Scotland rather than the other way around, but divergence is certainly there.

#### Endnotes

1 This is the effect although, technically, only the reserved powers are specified.

2<sup>1</sup> Further confusion is added when Scottish MPs are appointed to UK departments dealing predominantly with England, as in the case of John Reid, made Secretary of State for Health in 2003, on the grounds that any MP can serve in any 'UK department'.

3 There have already been arguments over 'modulation', the switch from support for production to rural development, which Scotland has opposed.

4 For example from the manifesto of the Scottish Council of Voluntary Organizations at the 2003 elections. 'The UK govt has made £300M available through the Comprehensive Spending Review for English voluntary organisations. The Scottish voluntary sector is calling for an equivalent initiative to build on recent efforts...The equivalent funding made available to Scotland through the CSR must be set aside to underpin the recommendations of the 2001 social economy review.' In the law on homosexual rape, we 'trail behind England and Wales'. On charity law reform there was no progress. 'This is in direct contrast to the sweeping reforms to English charity law proposed in September 2002 by the UK government's Strategy Unit'.

5 A BMA survey in 2003 showed only 40 per cent of doctors in Scotland in favour of charging for home visits, against 58 across the UK (Herald, 29 April 2003).

6 Strict parity would mean the application of the 'Barnett consequential' to Scotland. This would provide cash increases per capita for each service equal to England. It would not mean the same percentage increase, because of the historically higher levels in Scotland.

7 Expenditure plans are reported Sometimes as 'departmental expenditure limits' and sometimes as 'annual managed expenditure' (including items outside the Barnett block).

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