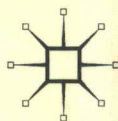


Comparing Devolved Governance

DEREK BIRRELL



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List of Abbreviations

AM	Assembly Member
AME	Annual Managed Expenditure
AMS	Additional Members System
BIC	British-Irish Council
COSLA	Convention of Scottish Local Authorities
CPANI	Commissioner for Public Appointments, Northern Ireland
CSR	Comprehensive Spending Review
DEL	Departmental Expenditure Limit
DFP	Department of Finance and Personnel
DUP	Democratic Unionist Party
EHRC	Equality and Human Rights Commission
ELWa	Education and Learning Wales
ESRC	Economic and Social Research Council
EU	European Union
IRA	Irish Republican Army
JMC	Joint Ministerial Council
LCO	Legislative Competence Order
Lib Dems	Liberal Democrats
LSB	Local Service Board
MEP	Member of the European Parliament
MLA	Member of the Legislative Assembly
MPA	Ministerial Parliamentary Aide
MSP	Member of the Scottish Parliament
NAW	National Assembly for Wales
NDPB	Non-Departmental Public Body
NHS	National Health Service
NIA	Northern Ireland Assembly
NIAO	Northern Ireland Audit Office
NICS	Northern Ireland Civil Service
NILGA	Northern Ireland Local Government Association
NIO	Northern Ireland Office
NSMC	North-South Ministerial Council
OCPAS	Office of Commissioner for Public Appointments, Scotland
OFMDFM	Office of First Minister and Deputy First Minister
PFI	Public Finance Initiative
PR	Proportional Representation
PSA	Public Service Agreement

QUANGO	Quasi-Autonomous Non-Governmental Organisation
REGLEG	Network of the Regions with Legislative Power
RPA	Review of Public Administration
SCS	Senior Civil Service
SDLP	Social Democratic and Labour Party
SNP	Scottish Nationalist Party
SOA	Single Outcome Agreement
STV	Single Transferable Vote
UCL	University College London
UK	United Kingdom
UN	United Nations
UUP	Ulster Unionist Party
WAG	Welsh Assembly Government
WALGA	Welsh Association of Local Government Authorities

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Introduction

The purpose of this book is to provide a comparison of the systems of devolved governance in Scotland, Wales and Northern Ireland. The focus of the book has four main themes: to describe and examine the major institutions and processes of devolution in each country; to focus on the wider dimensions of devolved governance; to make a comparative analysis between Scotland, Wales and Northern Ireland and finally, to question the continuing validity of describing devolution as asymmetrical. The current era of governance through devolution has only been in place in all three countries since 1999, but the period since then has seen considerable change in political developments and institutions. This study has an emphasis on developments since 2007, when new governments came into office in each of the three countries. These political developments were followed by changes in the machinery of government and by decisions and actions to consider further changes. It has also been possible to take account of further shifts in the machinery and direction of devolved governance following the outcome of the 2011 elections and the formation of new administrations.

The focus on governance

The term governance can have a broad range of meanings, based on a distinction with the term government meaning a single hierarchical entity. Institutions of governance are those bodies who exercise powers over public decision-making. The term governance is associated with the shift in power away from central government institutions downwards to regions and sub-regions and upwards to transnational bodies (Newman, 2001). Rhodes (1997) significantly defined governance as governing through networks, in the context that there is no one centre but multiple centres of policy-making, with the central state losing power and multi-level government. Rhodes defined governance as broader than government and also covering non-state and governing by networks with a significant degree of autonomy from the state. This definition has been criticised (Kjaer, 2011) as narrowly

identifying governance with networks involving the voluntary and private sectors. Kjaer (2004) distinguished between different forms of governance including governance in public administration and policy, EU matters, international relations but regarded networks as a sub-type. Rhodes (2007) did qualify his terminology to the phrase 'network governance', embracing increasing fragmentation of government and a differentiated polity in the UK. He also notes that devolution to Scotland, Wales and Northern Ireland adds a further layer of complexity and fuels territorial networks.

Governance can be taken as covering the decentralisation and fragmentation from one unitary government to sub-national or regional governments, to local government and to networks or partnerships. Producing what Newman (2001, p. 13) called a more fragmented and dispersed pattern of service delivery and regulation. Governance can be intergovernmental in nature, including EU engagement or have an international dimension and may link the public, private and voluntary sectors. The concept of governance has been linked to an analysis of the complex interactions and interdependence of government institutions, community, citizens and civil society (Newman, 2001, p. 17).

The term governance in this study is used in an inclusive fashion to include all that pertains to public and governmental institutions, decision-making and provision. The meaning of the term remains contested but it is intended here to extend the scope of the comparison beyond the formal high profile structures of government, the Scottish Government and Scottish Parliament, the Welsh Assembly Government and the National Assembly of Wales and the Northern Ireland Executive and the Northern Ireland Assembly. The book extends the comparison to the civil service, central administration and executive agencies, non-departmental and other public bodies or quangos, local government and also the areas of intergovernmental institutions within the UK and Ireland, EU institutions and forms of engagement, and other international relations. Governance can range over wider formats for participation and inclusion in the structures and processes of decision-making and service delivery. Partnerships involving combinations of statutory bodies, or with voluntary and private sector organisations are the most common type.

The focus on governance also reflects the contemporary importance given to political institutions as the basis for comparative political studies (Bara and Pennington, 2009). Political institutions do reflect rules, conventions, cultural norms, values and are in turn shaped by party political policies and strategies. Thus, comparing political institutions or adopting approaches from the institutionalist perspective does not reduce the need to identify explanatory factors for the operation of institutions, including the need to discuss party political values and influences on governmental strategies (March and Olsen, 2006). Studies of political institutions and multi-level governance have had a focus on examining processes of institutional change (Carter, 2008). Kjaer (2011) argues that the study of governance has had a concern with institu-

tions and institutional change. The current era of governance through devolution has only been in place in Scotland, Wales and Northern since 1999, but the period since then has seen considerable change in political developments and institutions. The concept of governance provides a useful tool for analysing the whole range of realignments in structures, processes and relationships which devolution has produced.

The United Kingdom context

In the operation of devolution the UK Government and the Westminster Parliament occupy a position with dual responsibilities, as the government and parliament for the whole United Kingdom and also as the government and parliament for England only. The UK Government and Parliament therefore has a major impact on the workings of devolution and devolved institutions. This influence arises in a number of contexts. Firstly, the UK Government has ultimate authority over the devolved institutions and is responsible for constitutional legislation, overseeing the working of devolution and financial allocations. A second influence relates to the copying of Westminster institutions and practices. The Westminster model can be viewed as covering parliamentary practices, core cabinet/executive working, the role of the civil service and relationships with local Government and other public bodies. Thirdly, working relationships between the UK Government and the devolved administrations have become more important as devolution has developed. Intergovernmental cooperation, communication and joint working between the UK Government and the devolved administrations has become more significant with the acknowledgement of major areas of overlapping and closely related responsibilities, for example, the economy, employment and child poverty. There has also been a recognition of the value of collaboration in some non-devolved areas, for example, EU matters, and in dealing with any disputes that arise. Fourthly are the views and approaches of respective UK Governments to the working of devolution and its development. The Blair administration had overseen the introduction of the devolution settlement in each country and had an obvious interest in making the systems work. The Brown administration had delivered somewhat mixed responses, facilitating the Welsh referendum on extending legislative devolution, working to achieve the devolution of criminal justice to Northern Ireland but displaying more hostility to the demands of the SNP Government in Edinburgh. The UK Coalition Government has given commitments to key developments with Welsh legislative powers and the Scotland Bill introducing major fiscal arrangements. Overall it has advocated a respect agenda underpinning devolution but in practice it is more likely to support a 'no surprises' approach. Neither the Conservative nor Liberal Democrats have a large electoral constituency in Scotland, Wales or Northern Ireland. Fifthly is the impact of major UK Government policies on non-devolved matters on the

functioning of the devolved administrations. The most significant policies have related to reductions in public expenditure, changes to social security and welfare reform. Some policy developments may be more compatible with the policies of the devolved administrations, such as localism, promoting the voluntary sector, reducing the number of quangos and simplifying the public sector.

The operation of devolution

The study of devolution can be considered in three phases: the original legislation in 1998 and its introduction; the developmental process in succeeding years; and planning and debates on future development. This study examines in particular the developmental process since 2006–2007 through the phased devolution of legislative powers to Wales, the restoration of devolution following the St Andrews Agreement in Northern Ireland and the impact in Scotland of SNP Governments. The particular key aspects of devolution that are addressed can be described as

- The growth of devolved powers and their impact on all aspects of governance.
- The nature of government in each country and the significance of differences in the composition of the executives; between coalitions, minority or majority governments.
- The influence of existing patterns and sectors in institutions of governance, the civil service, central administration, local government and quangos. The legacy of similar systems throughout the UK and barriers to change.
- The use of devolved powers in Scotland, Wales and Northern Ireland. This is related to the main areas of expenditure, the identification of changes in functions and the ideological commitment to service provision and outcomes.
- The adoption of policy styles. Policy styles have shaped the nature of governance in each country. This can relate to; commitment to public participation in decision-making, methods of public accountability, joined up policy-making, and policy copying and transfer between Scotland, Wales, Northern Ireland and England.
- Public service delivery, effectiveness, modernisation and efficiency; inter-sectoral collaboration and participative working.

The main question

The often expressed perception of the overall architecture of devolution is that it is asymmetrical. This assertion received widespread support in the early years of devolution post 1999. This was expressed in such views as

'devolution has been asymmetrical in that the nature and degree of devolution has been different in the different parts of the UK' (Oliver, 2003). Other similar evaluations were 'that one of the most important features of the current devolution settlement is that it is asymmetrical' (Curtice, 2001) and 'devolution provides a new level of government subordinate to Westminster on an asymmetrical basis (Leyland, 2002). As devolution developed this continued to be a dominant view, for example, 'the UK's devolution development is highly asymmetrical' (Hazell and Rawlings, 2005). Jeffery and Wincott (2006) also describe the devolved government arrangements as markedly asymmetrical. The scope of powers, the nature and operation of the governments and the position of England were the main features alluded to in evidence for asymmetry at the time. Assessments of devolution ten years after its introduction have still tended to this view. An assessment by Mellett (2009) suggests the shaping of the model of devolution has resulted in a heavily asymmetrical model. Formal inquiries also expressed similar views. The House of Commons report *'Devolution: A Decade On'* uses the precise assertion 'devolution is asymmetrical' (House of Commons Justice Committee, 2009) and the Calman *Commission on Scottish Devolution* noted that asymmetric devolution differs in nature and extent in each of the nations and territories to which it has been applied (Commission on Scottish Devolution, 2009). The increase in divergence in policy outcomes has also encouraged the perception expressed by Jeffery et al (2010) of a differentiation in how policy is made in each part of the UK.

Different historical backgrounds to the origins of devolution, different party political systems, variations in political ideologies and social values and even geographical differences are wider factors that may encourage assumptions in favour of identifying asymmetrical devolution. A number of factors more closely related to the systems of devolution have encouraged the prominence and durability of the asymmetric view. Firstly, the view is often based simply on the absence of devolution for England or the regions of England and the identification of lopsided or partial devolution. This focus on the question of England does take attention away from comparing Scotland, Wales and Northern Ireland. A second factor has been the perception that Northern Ireland is very different from Scotland and Wales. The background of political violence, the search for political agreement on governance arrangements and distinctive political parties have promoted an attitude that the workings of devolution in Northern Ireland must be different, even unique. The inquiry of the House of Commons Justice Committee into *'Devolution Ten Years On'* deliberately excluded Northern Ireland. The Northern Ireland experience of devolved institutions and practices was not considered, on the grounds, that the restored system from 2007 was not long up and running (House of Commons Justice Committee, 2009, para. 11). A third factor has been an emphasis in much analysis of devolution on the party political dynamics with attention paid to distinctive features in the origins of devolution and the political

system in each country. Fourthly, it can be argued that differences have been exaggerated and it has been noted by Mitchell (2010a) in comparing Scotland with Westminster, that 'there has been a tendency in much commentary to exaggerate small differences; a narcissism of small differences'. Apparent differences between Scotland, Wales and Northern Ireland in governance and policies require detailed consideration and assessment of their consequences. Fifthly, there appears, in more recent analysis, an underestimation of the impact of changes and trends in the processes of devolved governance and also an underestimation of changes in areas of public policy and administration. Some quite significant changes have taken place subsequent to the major Economic and Social Research Council (ESRC) *programme on devolution and constitutional change*, which it has been argued tended to find minimal change from pre-devolution arrangements (Deacon, 2006). Sixthly has been a focus in the literature and commentaries on a one-country approach with governance in each country described and analysed separately. There have been few attempts at a detailed comparative analysis between Scotland, Wales and Northern Ireland.

A major focus in this book is on the identification of similarities and differences in the nature of the devolved institutions of governance and the ways they have operated between Scotland, Wales, and Northern Ireland. Such an exercise requires a judgement on the salience of any identifiable differences in the operation of the political institutions and the system of governance. The major questions and themes examined throughout the book can be set out as follows: have the changes to devolved governance since 2007 actually led to a greater convergence or symmetry in the institutions and operation of devolution? Has any convergence been of such a nature and scope as to amount to evidence for questioning the general attribution of asymmetrical devolution? Will likely changes in the next few years lead to even further convergence? Even if greater symmetry occurred in the 2007–2011 period it can be asked if there are indications that such a trend may not continue. A further contextual factor is that devolution has been often assessed in terms of policy outputs and an analysis of outcomes in provision. This is used to identify divergence and convergence, both between each devolved administration and between them and England. Some aspects of output, for example, the nature of legislation, policies and strategies are relevant in comparing the operation of political institutions.

The comparative approach

The operation of the core institutions and process of devolved governance are compared in an integrated fashion, rather than the study being organised in separate chapters for each country. Within each chapter the major features of devolved governance are described and compared in relation to Scotland, Wales and Northern Ireland. It is the intention to devote roughly

equal consideration to the practices in each country, unless there is a clear reason for not doing so. As the study concentrates on making comparisons on devolved governance between Scotland, Wales and Northern Ireland, there is not always a comparison with England. Reference to the UK Government's role and systems of governance in England are introduced as appropriate.

Sources of material

The main sources used for the book are drawn from government, Parliament/Assembly, academic, and research publications plus other commentaries. Government publications include material from the three devolved governments and the UK Government as well as strategies, reports and special inquiries from individual departments. Related to this are ministerial speeches and press releases explaining policy developments. A substantial volume of material is published by the Scottish Parliament, the National Assembly of Wales and the Northern Ireland Assembly, mainly through their committees. This is the main source for the sections on the legislative and scrutiny process. Also used is material published by local government organisations, public boards/quangos and special bodies such as the British-Irish Council. Papers produced by the Parliament/Assembly research and information bodies have been a useful source of material plus the substantial amount of evidence submitted to committee inquiries and consultations. Use has also been made of relevant material produced by the political parties and special lobbying and interest groups. The operation of devolution has produced a large academic literature of books and journal articles and special archives in the shape the *UCL devolution monitoring programme* and the *ESRC devolution and constitutional change programme*. A number of research institutions and trusts have had a special interest in producing material on devolution. The devolved countries have also hosted policy networks, research seminars and special journals which have produced much detailed information and analysis. Useful sources have been *Scottish Affairs*, *Contemporary Scotland*, *Agenda* from the Institute of Welsh Affairs and *Agenda* (Northern Ireland public affairs magazine). Academic material on devolution has become substantial in major journals in public policy, politics and social policy, along with conference presentations, particularly at the Public Administration Committee, the Social Policy Association and the Political Studies Association Sub-group on Territorial Politics.

Summary of contents

The layout of the book covers the main aspects of the operation of devolved governance in eight main sections; one relating to powers and financial resources; three to the operation of executive government and Parliament/Assemblies; three relating to the administrative and delivery systems and one to intergovernmental relations. Following the introductory chapter there is a

comparison of the powers that have been devolved to each country. This examines the similarities in principles used to specify the scope of devolved powers and the specification of non-devolved powers for Scotland and Northern Ireland. The original different form of executive-based devolution and specification of devolved functions to Wales is explained. A comparison is made of the changes to devolved powers since the 1998 legislation. This includes the major changes introduced by the Government of Wales Act 2006, which enhanced the legislative capacity of Welsh Assembly Government, the devolution to Wales of primary legislative competence in 2011, the impact of the St Andrews Agreement and the subsequent devolution of policing and justice powers in Northern Ireland and the more incremental increase of devolved powers in Scotland. Comment is also made on the nature of non-devolved powers retained by the UK Government and overlaps with devolved powers. Also discussed are the findings of major inquiries into the future powers of government in Scotland and the referendum on increased legislative powers for Wales. This chapter also analyses the nature of the financial resources available to the devolved governments and the allocation process. It also explores whether the implementation of the Barnett Formula involves any differences in outcomes and whether there are any different constraints on each administration's control and allocation of resources. A comparison is made of the recommendations of major investigations which have been completed into the Barnett Formula and the nature of pending and future possible changes in the financial arrangements.

The next three chapters cover the core institutions of devolved government. Chapter 3 compares the working of the three executives and includes the formation and appointments of the cabinet executives. The role of the executive arm of each government is examined and compared, including the role of First Ministers, Deputy First Ministers, other ministers and ministerial/political advisers. Alterations to the operation of executive government since 2007, some introduced by legislation and some by political changes, are analysed. The work of senior and junior ministers is described along with the configuration of ministerial portfolios and factors influencing changes in portfolios. Also compared is the nature and scope of executive decision-making, including the role of the programmes for government. The relevance of the principle of collective responsibility and ministerial codes are also considered as well as an assessment of the leadership role of the executive team in each country. The Scottish Parliament, The National Assembly of Wales and the Northern Ireland Assembly are the institutions most closely associated with the very existence, uniqueness and operation of devolution. Consequently, two chapters are devoted to the operation of the three elected chambers. Chapter 4 starts with an explanation of the different electoral systems and the nature of party representation and party strengths. There is also a comment on the significance of the Parliament/Assemblies as a focus or as a centre of the polity and their openness to the public. The main topic for exploration and compar-

ison in this chapter is the legislative function. The processes for the passage of primary legislation in Scotland and Northern Ireland and the system which gave Wales enhanced legislative power are compared in detail. The role of legislative consent motions, whereby the application of Westminster legislation to devolved matters can be approved, is also compared. A number of other dimensions to the legislative process are compared in detail including the treatment of secondary or subordinate legislation, private bills, members' bills and innovative sources of legislative proposals. An assessment is made of the amount and scope of legislation which has been enacted and the impact of the devolved procedures on law-making. Chapter 5 is focussed on the investigatory and scrutiny role of committees in holding ministers and civil servants to account. A comparison is made between the organisation and composition of committees and the range of subjects for inquiry. Also analysed and compared is the influence of their reports on government policy and strategies and their contribution to improving access to decision-making, public participation and accountability. Attention is also paid to distinctive developments such as the role of committees in a petitions process.

The next three chapters turn to the administrative and delivery institutions, the civil service, local government and quangos. Chapter 6 compares the structure of what is the central administration within devolved government. This covers the organisation of departments, the role of executive agencies and the structures of the civil service. The political and policy role of senior civil servants is discussed, noting common concerns about the policy-making capacity in the devolved administrations. Reference is also made to the argument for separate devolved civil services on the Northern Ireland model and to the idea of a unified public service, as raised in Wales. Local government systems in all three countries had been existence long before devolution. Chapter 7 compares the structure, functions and operation of local government and identifies the nature of changes following devolution. The major focus is on the relationship between the devolved administrations and local government including partnership arrangements at decision-making, delivery and community levels. Financial arrangements have an important role in the relationship and attention is paid to policy debates that have taken place in all three countries on local taxation. An assessment is made of the overall impact of devolution on the role of local government. The devolved administrations inherited a large number of public bodies or quangos. Chapter 8 examines the major debate that has taken place about the role of quangos under devolution and their relationship with the devolved administrations. A comparison is made of the implementation of the outcome of the debate in terms of reduction, streamlining and simplification strategies, but also noting the nature of remaining quangos. Attention is also paid to quangos with a UK wide remit and cross-border bodies. The devolved administrations have been involved in attempts to increase the political accountability of quangos and also in making board membership more widely representative of the community. A rather different aspect of devolution