

## *Introduction: The Dynamism of Devolution in its Third Year*

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Devolution is never dull. The third year of devolution saw significant developments in all parts of the UK as devolution continued to unfold, and the dynamic forces released by devolution continued to work their way through the system. Scotland saw another change of First Minister; the Welsh First Minister established an independent commission to review the devolution settlement in Wales; in Northern Ireland the roller coaster came off the rails once more, when the British government suspended the devolved institutions for the fourth time in three years. Meanwhile in England the campaign for regional government continued, and the government responded by publishing its plans for directly elected regional assemblies in the long awaited regional government White Paper.

Devolution has certainly not reached a steady state, and the dynamic continues to unfold. In some places this is clearly visible, as in the developments highlighted above from England, Wales and Northern Ireland; in others the currents are deeper, working below the surface, and their effect is harder to discern. This opening chapter will briefly describe the dynamics which are at work, and set the scene for the subsequent chapters which explain the developments in detail.

### THE STRUCTURE OF THIS BOOK

The book is organised into four parts. Part 1, the Nations, tells the story of the third year of devolution in the four countries of the UK. There have been dramatic developments in each, so each country is given extended treatment in separate chapters on Scotland, Wales, Northern Ireland and the English regions. Part 2 brings the reader back to the centre, with chapters describing the main developments in intergovernmental relations and Whitehall, and the impact of devolution on Westminster. Here the story is more one of very gradual evolution, with the institutions of central government making the minimal changes necessary to adjust to the realities of devolution.

In the second half of the book the focus shifts from telling the story of the third year to more analytical chapters set in a longer time frame. Part 3 takes a

step back, to analyse how devolution has caused divergence in two key areas of public policy. Chapter 8 analyses the reasons for divergence in health policy during the first four years of devolution. Chapter 9 is a detailed case study of the biggest policy divergence which occurred in that period: the decision by the Scottish Executive to introduce free long term care for the elderly.

Finally Part 4 looks ahead to the devolved assembly elections which will take place in May 2003. Chapter 10 analyses to what extent the devolved elections in the UK are ‘second order’ elections with different voting behaviour from general elections, based on comparisons with the different voting behaviour in state elections in Germany, provincial elections in Canada and the regional elections in Spain. Chapter 11 explains how we should evaluate the election results, based upon the first devolved assembly elections and more recent opinion polls. The final chapter, chapter 12, sums up the achievements of the devolved administrations in their first term, and sets out some of the challenges they will face in the second.

The remainder of this opening chapter contains an introduction to the four main parts of the book. Before that, the key developments of the third year of devolution are set out in Figure 1.1.

**Figure 1.1: Key events in the third year of devolution 2001–02**

<b>2001</b>	
18 September	Seamus Mallon (SDLP) announces he will not seek re-election as Deputy First Minister in Northern Ireland.
30 October	Plenary meeting of Joint Ministerial Committee in Cardiff. Tony Blair gives speech in National Assembly for Wales.
6 November	David Trimble (UUP) and Mark Durkan (SDLP) elected as First and Deputy First Minister in Northern Ireland, after Alliance Party re-designates 3 of its 5 MLAs as ‘Unionists’ to secure cross-community consent.
8 November	Resignation of Henry McLeish MSP as Scottish First Minister.
22 November	Jack McConnell MSP elected as Scottish First Minister.
27 November	Rhodri Morgan announces Welsh Executive will be known as the ‘Welsh Assembly Government’.
<b>2002</b>	
14 February	Final report of Welsh Assembly Review of Procedure, set up in December 2000 and chaired by Lord Elis-Thomas.
27 February	House of Lords Select Committee on the Constitution start inquiry into Devolution: Inter-institutional Relations in the UK.

18 April	Labour Peer Lord Richard appointed to chair independent Commission into Powers of National Assembly for Wales.
2 May	Tony Blair and Gordon Brown visit Belfast to announce Reinvestment and Reform initiative, conferring borrowing powers on Northern Ireland government.
2 May	First elections for directly elected Mayors in 7 local authorities in England.
9 May	Publication of English regions White Paper, <i>Your Region, Your Choice</i> .
17 May	In Irish general election Sinn Féin increases representation in the Dail from one to five TDs.
29 May	DTLR broken up into Office of Deputy Prime Minister, headed by John Prescott and responsible for local and regional government in England; and Department of Transport headed by Alistair Darling.
17 June	Mike German AM cleared of criminal charges, returns to Welsh Cabinet as Deputy First Minister and Minister for Rural Development and Wales Abroad.
3 July	Sunderland Commission reports recommending introduction of STV for local government elections in Wales.
15 July	Treasury Spending Review announces New Public Spending Plans 2003–2006.
31 July	Members announced of Richard Commission into Powers of Welsh Assembly.
14 October	Suspension of devolution to Northern Ireland. Two extra Ministers appointed to complement three-strong NIO team.
22 October	Plenary meeting of Joint Ministerial Committee in London.
28 October	Paul Murphy replaces John Reid as Secretary of State for Northern Ireland. Peter Hain appointed to replace Paul Murphy as Secretary of State for Wales.

#### THE NATIONS: WALES

The main developments in 2001–02 were in the two nations bringing up the rear of the devolution stakes: Wales and England. In Wales the trajectory continued in the direction described by John Osmond in previous years. Some steps are small, some large, but every step increases the separation of powers in Wales and takes the Assembly in a parliamentary direction. The changes in designation say it all. The ‘Assembly Secretaries’ of the Government of Wales Act now call themselves Ministers, and the Executive

Committee has become the Cabinet. The Executive as a whole is now known as the 'Welsh Assembly Government', and the Management Board of senior civil servants has become the Executive Board. Within the peculiar body corporate structure prescribed by the Government of Wales Act the elastic has been stretched as far as it possibly can to create a more conventional division of functions between executive and legislature.

The two reviews announced by Rhodri Morgan as part of the Partnership Agreement with the Liberal Democrats will continue this process. The first was an internal review chaired by the Presiding Officer, Lord Elis-Thomas, which looked at how to strengthen the way the Assembly works without any changes to the statutory framework. Its report, the product of a year's work, was presented to the Assembly in February 2002 and adopted unanimously. The main issues it addressed included the relationship between the Assembly's executive, legislative and deliberative functions, the role of its various committees, and the making of new Westminster legislation affecting Assembly functions. The key institutional change it called for was to sharpen and clarify the split between the Assembly's executive and the legislative and deliberative sides. It was as a consequence that the Welsh Assembly Government came formally into being in March 2002, with some 3,800 civil servants working for it. The remaining 200 are assigned to the renamed Presiding Office, which is responsible for providing support to Assembly Members in plenary and in their committee work, and for running the Assembly's debating, scrutinising and law-making functions.

The second review is an independent Commission, chaired by Lord Richard, which is expressly charged with reviewing the limitations imposed by the Government of Wales Act, and in particular the central limitation that the National Assembly has no primary legislative powers. It was established in the third year of devolution, in July 2002, but invited to report back 18 months later, by the end of 2003. In terms of the Assembly's long march towards becoming a parliament, the Richard Commission represents the biggest single step. Previous steps have taken the Assembly as far as it can go within the existing statutory framework. If the Richard Commission recommends that the Assembly should have primary legislative powers, they would in effect be recommending that the Assembly become a parliament, with powers much closer to those of the Scottish Parliament and Northern Ireland Assembly.

They would also be recommending a further evolution which appears to accord to the wishes of the people of Wales. Chapter 2 reports on major surveys done by the Institute of Welsh Politics at Aberystwyth which show support for a parliament (with law making and tax raising powers) going up in leaps and bounds, from 20 per cent at the time of the referendum in 1997, to 30 per cent at the time of the first Assembly elections in 1999, and almost

40 per cent in summer 2001 (overtaking those supporting an Assembly with its current limited powers, who in 2001 fell to 25 per cent: see Figure 2.9).

#### THE NATIONS: ENGLAND

In England the long march to regional government has a long way to go yet, but 2002 heralded a major development with the government's July White Paper *Your Region, Your Choice*, which charted a way forward for those regions that want to proceed to directly elected regional assemblies. But campaigners could raise only two cheers, because the assemblies proposed would have strategic powers only and limited budgets, and the way forward was potentially blocked by a major obstacle, in the form of local government reorganisation. But another obstacle, or rather diversion, of an alternative model of city regions based on major provincial cities run by mayors, was effectively removed when no big cities in the 28 mayoral referendums held in 2001-02 opted to have a directly elected mayor.

As in Wales, the direction of devolutionary travel continues to be one way, towards stronger regional government for England; but the destination is much less certain. Even though city regions may now be out of the running, there are other alternative models for strengthening the regional tier of government without going as far as directly elected regional assemblies. The White Paper set out these alternatives in chapter 2. The Government Offices for the Regions could be further strengthened. Regional Development Agencies could be given bigger budgets and a wider range of functions. The existing voluntary Regional Chambers could be constituted on a statutory basis, and given formal powers over the RDAs. All these existing regional bodies have been growing fast in terms of budgets and functions, albeit from a low base, and all have something to lose if some of their powers and functions were transferred to elected regional assemblies.

Within the government John Prescott continues to be the sole champion of regional assemblies for England. Tony Blair is lukewarm at best, as are most of his Cabinet colleagues. None was prepared to offer up significant powers or budgets for transfer to regional assemblies, which is why the model on offer in the White Paper is so slimline and strategic. The potentially fatal blow dealt by the Cabinet was to insist on unitary local government as a precondition for regional government, so that regional government could not be vulnerable to attack as an 'additional tier'. Privately many ministers are in favour of unitary local government (as is John Prescott himself). But it did not need to be so tightly linked to regional government, or made a formal precondition. Local government restructuring risks requiring a major diversion of energy and resources, and could tip the balance in any referendum against the introduction of regional government.

## THE NATIONS: NORTHERN IRELAND

Northern Ireland has a dynamic of a different kind. As chapter 4 relates, it is the ups and downs of the peace process which have derailed devolution, rather than withdrawal of confidence in devolution itself. On the unionist side the Belfast Agreement was meant to lead to decommissioning of weapons as well as to devolution, and it was the continuing failure of the IRA to engage in the decommissioning process which led unionists to lose confidence in the institutions of the Belfast Agreement, and in particular power sharing with Sinn Féin, the political wing of the IRA.

Ironically the third year of devolution, from November 2001 to October 2002, saw the longest phase of concerted implementation of the Belfast Agreement. It was the first time that the Assembly operated for a full year, and with a reformed legislative process its legislative output increased significantly, the committees got down to work and began to scrutinise the executive and the public finances. But it was not to last. Rising loyalist paramilitary violence and, in Belfast, naked intercommunal hostility, further undermined the confidence of both communities. A crisis was already looming when it was discovered that Sinn Féin sympathisers had apparently been carrying out espionage against ministers in the Northern Ireland Office. That was enough to bring about a complete collapse of confidence, and rather than have David Trimble walk out of government, the UK government suspended the institutions. The suspension, which began in October 2002, looked likely to last a long time, with no certainty that the next Assembly elections will be held in May 2003.

## THE NATIONS: SCOTLAND

Scotland is presented last in this year's tour of the nations, because it is where the least happened. But here too there was some turbulence, indicated in the title of chapter 5: 'Third Year, Third First Minister'. The third year of devolution opened with the downfall of Henry McLeish, who was replaced in November 2001 as First Minister by Jack McConnell, who had been Dewar's Finance Minister, and then served as Education Minister. McConnell had almost a clean sweep of the Cabinet, so that its longest serving members are the two Liberal Democrat Ministers, Jim Wallace and Ross Finnie. They have provided continuity and stability to the coalition government while their Labour colleagues have changed around them.

Stability has been the watchword under McConnell, with the only further turbulence during his first year being the departure in May 2002 of Wendy Alexander, his main rival and Minister for Enterprise. With her departure the Cabinet lost its most 'business friendly' minister, and one of its rising stars.

As Scotland heads for the polls in May 2003, one of the questions which may be asked of the McConnell administration is what it stands for. McConnell is a Labour party machine politician (and former General Secretary of the party), with no strong policy views. If he forms another coalition with the Liberal Democrats, it may turn out, as with the first Labour/Liberal Democrat partnership, that the policy drive comes disproportionately from the junior partner. In Labour's first term the two biggest policy changes, on student tuition fees and free long term care for the elderly, both came from the Liberal Democrats.

#### THE CENTRE

Back in Westminster and Whitehall it was business as usual in the third year of devolution. The sustained period of apparent calm in Northern Ireland meant that all strands of the Belfast Agreement were in operation, including north-south (the North South Ministerial Conference) and east-west (the British-Irish Council). Intergovernmental relations between the UK and the devolved administrations continued relatively smoothly, with just two plenary meetings of the Joint Ministerial Committee (the annual meetings in October 2001 and October 2002); although the JMC (Europe) met five times, and the JMC (Poverty) was revived in September 2002. The UK government remains clearly the dominant partner: intergovernmental meetings are convened to suit its agenda (eg the JMC (Poverty) was revived by Gordon Brown to pursue his social policies); and UK dominance is reinforced through London's complete control of finance.

At Westminster the new Parliament elected in June 2001 has strongly reforming Leaders in both Houses, in Robin Cook and Lord Williams of Mostyn, but neither includes adjustments in response to devolution as part of their modernising agenda. In the Commons the full panoply of pre-devolution territorial committees continues, with separate Select Committees for Scottish, Welsh and Northern Ireland Affairs, and the continuation of three Grand Committees for Scotland, Wales and Northern Ireland. The most significant development took place in the Lords, with the new Constitution Committee's inquiry into *Devolution: Inter-institutional Relations in the United Kingdom*. Because the Lords committee structure is not so fragmented, they can take a view of devolution in the round which is denied to the Commons; their report will be the most important parliamentary report on the subject since devolution began.

#### DIVERGING PUBLIC POLICIES

The Lords report will focus on institutions. More important for the public is the impact the new institutions have on their daily lives. What are the

differences in public policy as a result of devolution, and are there any limits to how far public policy might diverge? Chapters 8 and 9 focus on policy divergence in health and social rights, an area where the devolved countries have some of their greatest room to make their mark and where the political, economic, and social stakes are very high.

Chapter 8 looks at three high-profile areas of health policy, namely organisation, public health, and the public-private relationship. It finds remarkable divergence for such a short period of time (even if health policy takes years to affect people's lives) and suggests that it is because each of the four systems has a different balance of policy advocates who can work with their differing party systems to change policy. Chapter 9 is a case study of the most visible, important, and expensive policy change made by a devolved government: Scotland's decision to fund long-term personal care for the elderly. It shows the combination of institutional constraint and political forces that led the Scottish government to dramatically break with Westminster. It also highlights a surprising aspect of the unique UK structure of devolution: the relative absence of constraints on the policies of substate governments. There is always tension in any system between unity and diversity: between the opposing values of devolution/divergence on the one hand, and uniformity/equity on the other. What is surprising in a system thought to place a high value on equity is that both chapters suggest that the UK may have a bias towards divergence. Between the diverging political systems and the weak constraints on policy change and divergence, the United Kingdom might, compared to its peers internationally, prove to be a particularly propitious environment for policy divergence within one country.

#### THE DEVOLVED ASSEMBLY ELECTIONS IN 2003

Devolution has introduced a new electoral dynamic to British politics. At Westminster the electoral battle is between Labour and the Conservatives, and Labour achieved landslide victories over the Conservatives in the last two general elections (1997 and 2001), with the third party, the Liberal Democrats, also doing well. This pattern is not reproduced in Scotland and Wales, which are four-party systems. The Conservatives are not nearly so strong, and the main opposition to Labour comes from the nationalist parties, the Scottish National Party in Scotland, and Plaid Cymru in Wales.

Chapter 10 shows how the devolved assembly elections may develop their own regional dynamic, separate from the elections to Westminster. In the first devolved elections in Scotland and Wales in 1999 Labour did very badly by comparison with its general election performance two years before, with its share of the vote down 19 percentage points in Wales, and 12 per cent in Scotland. By contrast the nationalist parties did very well, with Plaid

Cymru's vote share going up by 20 percentage points, and the SNP by a more modest 7 per cent compared with the general election. The issue to watch in the 2003 elections is whether this pattern repeats itself, suggesting that the devolved elections are uncoupled from the national electoral process, but follow a specific regional dynamic of their own. It will also be interesting to see whether the media begin to grasp this, and report the election from a baseline of the last devolved elections in 1999; or whether they take as their baseline the most recent general election results in 2001, and continue to view devolution through a Westminster lens.

The other thing to watch in the 2003 elections is turnout. Chapter 11 expects turnout to be lower than in 1999, for three reasons: because Westminster is now more clearly seen as the more important institution; because of devolution's failure to meet the high expectations of 1999; and because of decline in the perceived importance of the election outcome. (This last is not a problem unique to the devolved assemblies, but applies also to Westminster.) If turnout does fall significantly, then parties stand to gain if they can get more of their supporters out. But even if the nationalists do better than Labour in this respect, they are unlikely to form an administration in Scotland or Wales. The electoral system is not fully proportional, but is biased to Labour in both countries. Chapter 11 shows how if the nationalist parties won an equal share of the vote with Labour, they would be left with six fewer seats than Labour in Scotland and four fewer in Wales: leaving Labour free to form a government with the Liberal Democrats, but denying the nationalists the same opportunity. So the probability is that we shall see Labour-led administrations re-elected in both countries in 2003.

#### ISSUES IN THE SECOND TERM

How will the dynamics of devolution play out in the devolved assemblies' second term? At the constitutional level, the big issues will be how to handle the demand from Wales for primary legislative powers, and the next steps towards regional government in England. Welsh devolution had few strong supporters in Blair's first Cabinet, and it will be interesting to see how the second Blair government handles demands from Wales for more. Some will be anxious that the devolution bandwagon is running away with them, and may also get nervous about regional government in England, as the first Blair government did back in 1997. It will also be interesting to see the reaction of the other devolved administrations. Will the Scots (and Northern Ireland, if devolution is restored) support a demand from Wales for greater powers, which would take the National Assembly closer to the model of the Scottish Parliament, and the Northern Ireland Assembly? Or will they sit on their hands and let the Welsh fight their case on their own?

The pattern so far has been for the devolved governments to pursue things bilaterally with the British government. The asymmetry in the devolution settlement has reinforced this tendency, and has helped to reinforce the dominance of the UK government in intergovernmental relations. But the devolved governments have more in common than perhaps they realise, especially over issues like finance. So far they have not come together, and they have not even held a separate meeting just of the devolved governments: which is in marked contrast to the regular gatherings of state premiers in federal systems like Australia, Canada or Germany. In the second term there may develop a greater solidarity amongst the devolved administrations, and a greater consciousness of the issues on which they should develop a common cause against the British government.

The third issue to watch in the second term is further divergence in public policies. The main items are those where a different path was marked out in the first term: free long term care for the elderly, students' tuition fees, and in health the growing divergence described in chapter 8 between market-driven policies in England and a greater emphasis on public health in Wales and, to a lesser extent, Scotland. There is also the issue of PR for local government elections, with proposals for STV from the Sunderland Commission in Wales and the Kerley Committee in Scotland. Whether PR is introduced will depend on the bargaining power of the Liberal Democrats in any coalition negotiations in Scotland and Wales, where many Labour-led local authorities continue to be bitterly opposed.

Public policies may also converge, or come together round a new norm, as the devolved administrations learn from each others' experience. The best single example of that is the idea of a Children's Commissioner, first adopted in Wales, with proposals to copy it in Scotland and Northern Ireland. Others are free care for the elderly (first introduced in Scotland, partly copied in Wales); and abolition of student tuition fees, also first introduced in Scotland, partly copied in Wales, and now on the political agenda in England. Devolution is about difference, and it will be interesting to see whether in their second term the devolved assemblies continue to pioneer new policies, and whether other governments continue to follow them.