

Reflections on devolution: twenty years on

Alan GREER

Keywords: devolution, ministers, Scotland, Wales, Brexit

Abstract

May 2019 marks twenty years since the first elections to the Scottish Parliament and Welsh Assembly. This report discusses a paper published by the Institute for Government (IFG) that reflects on the experience to date of devolution, drawing on interviews with thirteen individuals who have served as ministers in the devolved governments. Reflecting the structure of the IFG paper there are three main themes in this report: governing without a majority, institutional change, and – in the light of Brexit - relationships between the devolved governments, Westminster and the EU. The conclusion is that the report, although limited in coverage, provides a useful addition to the literature on devolution.

Introduction

May 2019 marks twenty years since the creation of the Scottish Parliament and Welsh Assembly, and the formation of the devolved governments in Edinburgh and Cardiff. In a recent report, the Institute for Government (IFG) has reflected on the experience to date of devolution to Scotland and Wales (Northern Ireland is not covered).¹ While the implications of leaving the EU have been a major issue since the Brexit referendum, the report provides an insightful synoptic overview of some of the main themes that have characterised two decades of devolution. By focusing on the reflections of individuals who have served as Cabinet ministers, it provides a valuable addition to the existing wealth of literature on devolution, although it is by no means comprehensive in its coverage of the salient issues.

The report is based on thirteen interviews with politicians from all parties who have served in devolved governments, including three First Ministers and three Deputy First Ministers (full transcripts of the interviews are available on the Institute's web-site in its 'ministers reflect' archive²). One interviewee – Jane Hutt – has served in the Welsh government almost continuously since 1999 (a list of interviewees, positions held and dates of office is provided in an appendix). An introductory summary provides a brief analysis of the profiles of those who have held office, noting that 48 people have served in the Scottish government and 36 in the Welsh Cabinet (53 men and 31 women, with an average age of 49, and only eleven of whom had previously been elected to Westminster). Ministers have been drawn from four political parties – Labour, Liberal Democrats, Scottish National Party (SNP) and Plaid Cymru. The main body of the report is made up of three thematic chapters: governing without a single party majority; institutional change; and relations with Westminster.

Governing without a majority

A main influence on the operation of devolution has been the composition of governments, mainly because of the effect of the relatively proportional Additional Member electoral system. This does not rule out majority governments - a single party SNP government operated between 2011 and 2016, and the Labour

Party had a working majority in Wales after 2016. However elections have also produced coalitions and minority governments. Most of the first decade of devolution in Scotland saw a Labour-Liberal Democrat coalition, and in Wales Labour has been joined in government by the Liberal Democrats (2000-03) and Plaid Cymru (2007 to 2011). There have been minority Labour governments in Wales (for example 2003-07), and SNP minority governments in Scotland between 2007-11 and after 2016.

A main finding of the report is that both coalitions and minority governments have worked effectively but pose different challenges for ministers. All of the coalitions have lasted a full term, providing evidence to counter arguments that governments in non-plurality electoral systems are prone to instability. However a coalition has never been renewed after an election, suggesting that larger parties prefer to govern alone where possible. Four aspects about the composition of governments are discussed. First, interviewees generally agreed that the effectiveness of coalitions depends on setting clear and comprehensive 'rules of the game' through inter-party agreements on programmes for government covering policy and legislation (interestingly Lord Jim Wallace – Deputy First Minister in the Scottish coalition between 1999 and 2005 – argued that devolved governments did not need to take a common position on non-devolved issues, despite pressures from the civil service and the media for ministers to make statements). Coalition agreements have been negotiated after elections, although it would have been interesting further to explore the process of bargaining and whether there had been discussions on pre-election coalition pacts. Also important are effective dispute resolution procedures and good relations between the First and Deputy First Ministers (especially when from different parties). Second, there must be room for coalition partners to differentiate themselves on political and policy issues and maintain distinct identities, but also for both to get credit for achievements – especially for the junior governing party. Third, minority governments can be successful in policy development but to do so they need to prioritise and form tactical alliances on specific issues, an especially useful strategy when opposition parties are divided. Finally, the report suggests that while minority administrations have been defeated on some important policies (for example on the budgets in Wales in 2005 and Scotland in 2009), this requires a united opposition. So a core tactic of minority governments is to play on divisions among the opposition parties. The report concludes that minority governments 'can survive longer and accomplish more than expected' but to do so ministers 'must be realistic about what they can achieve' (p. 12).

Institutional change

The literature on devolution in the UK highlights its 'asymmetrical' nature, with variations between the territories on formal powers and institutional structures. From the outset the Scottish Parliament had more extensive powers than the Welsh Assembly and there was little change in the first decade. Under SNP administrations further powers were devolved in 2012, then again in the wake of the referendum on independence in 2016. In Wales – where the Assembly initially had no powers to make primary legislation – both ministers and officials had to work in an environment where incremental constitutional change was the norm as more powers were transferred, notably in 2007 and 2011. Interestingly some ministers expressed caution about the desirability of continued expansion of functions. Jane Hutt for example noted a tendency for powers to be transferred (including on prison health services and student support in higher education) but without sufficient financial resources.

A crucial factor in the formative years was the need to show that 'devolution works'. This was especially important in Wales where the 1997 referendum produced only a narrow majority for the creation of an assembly, although ministers in both countries suggested that in the early days 'the very existence of the new institutions felt vulnerable' (p. 14). As Jane Hutt noted, the Welsh Assembly was 'very much under scrutiny as to whether we were worth it, whether we would deliver the goods' (p. 14). Demonstrating

competence and effective governance was a crucial factor in bedding down the new institutions and securing popular legitimacy. In Scotland for example, ex-First Minister Lord McConnell (2001-07) emphasised the importance of the introduction of the ban on smoking in public places in 2006 which not only had benefits for public health but ‘enhanced the authority of the new institutions’ (p. 14).

The report argues that the newness of the devolved institutions opened up opportunities for innovation, both in structures and policy. For example the new SNP administration re-organised Scottish government in 2007 in an attempt to overcome departmental policy ‘silos’ and enhance cross-cutting initiatives, although interviewees disagree about whether this has made much practical difference. Conceptual arguments for devolution emphasise policy effectiveness and a desire for enhanced democracy and accountability (through taking decisions closer to those affected by them). Underpinning this, as the Kilbrandon Report noted in 1973, is a core political value that those who exercise transferred powers ‘have some measure of independence, permitting them to do things in their own ways, which may not always have the support of the central government’³. For the IFG, a central rationale for devolution was ‘to create a “policy laboratory” in which each part of the UK could try out different policies that best fit their local circumstances, and to allow them to learn from each other about what works best’ (p. 20).

There was agreement among ministers interviewed that, as put by former Scottish Justice Secretary Kenny MacAskill, their main motivation was ‘to deliver concrete improvements to the governance of the country and to the lives of its citizens’ (p. 19). Areas where the devolved administrations have been innovative include the ban on smoking in public places (although eventually extending throughout the UK, Scotland was the first to introduce the ban) and the introduction of the ‘opt-out’ organ donation scheme in Wales. However, the report found ‘little evidence of systematic sharing of evidence and learning’ between the various administrations (pp. 20-21). It is a pity that there is scant discussion of the reasons for this and there is scope in future for greater analysis of policy learning in the context of devolution. A particularly fruitful avenue for exploration would be around the ‘California effect’, considering to what, if any, extent policy agendas and stricter regulatory standards in areas like the environment and public health (perhaps linked to disparities in resources) spread from one of the devolved territories to other UK governments. This might relate to issues such as minimum unit prices for alcohol, responses to climate change, and regulation of genetic organisms.

Although it is perhaps more likely that administrations formed by nationalist parties will look to enhance differentiation and for unionist parties to face pressures for emulation, the Labour administration in Wales after 2000 took a ‘strategic decision’ to look for ‘made in Wales’ solutions and put ‘clear red water’ between it and the Labour government in London. Several interviewees - particularly Labour ministers in government during the 2000s - recalled being pressurised to copy decisions taken at Westminster, even though the matter was devolved. Some suggested that on issues like university tuition fees, ministers in London were ‘reluctant to accept the simple logic of devolution – that policy differentiation would take place and that this was a matter for elected politicians at the devolved level to decide’ (p. 24). As Lord Wallace recollected, a deputation from the Scottish government discussed differentiation on tuition fees with the UK government, noting that Tony Blair as Prime Minister ‘wasn’t very comfortable with it. But then we said: “Well that’s devolution, Tony”’ (p. 25).

The report highlights the challenges posed when new institutions are superimposed on existing structures of administrative decentralisation, and contains numerous insights about the implications of devolution for relationships between ministers and civil servants. On coalition governments, it is suggested that some civil servants were not comfortable with two sets of political masters, and that they also sometimes find it difficult to differentiate between devolved and non-devolved issues. Some civil servants also were uncomfortable with the increased level of political oversight, especially in Wales where there was little history of policy formulation before 1999 compared to the greater capacity of the Scottish Office. An

important factor concerns administrative capacity and whether this requires the development of a more distinctively local 'political class'. Carwyn Jones makes the perceptive point that the greater responsibility brought by devolution has made an administrative career in Cardiff 'far more attractive for bright young graduates... because they saw there was a chance for innovation' (p. 16). On the other hand, Jones also notes that after the devolution of powers of primary legislation to Wales in 2011 'the biggest challenge we faced was developing the skills to draft primary legislation, because there was no expertise at all in the old Welsh Office.' An important constraint here was that 'these drafters also had to be bilingual' and there are 'not many of them in the world' (p. 18). One Welsh minister noted the importance of 'informal encounters', referring to an occasion when he discussed a policy matter with an official from the Welsh Development Agency when they met in a supermarket. In general it would be interesting further to explore the perspectives of civil servants on devolution, and also the extent to which the location of public buildings in relatively small capital cities exerts an influence. For comparative purposes, all three of the devolved 'parliament' buildings in the UK are iconic but those in Cardiff and Belfast are more remote from the city centres than that in Edinburgh (although the point also relates to the implications for effective governance of the relative proximity of political and administrative buildings, wherever they are located).

Westminster and the EU

The third section of the report draws on the reflections of interviewees on inter-institutional arrangements and tensions, including around demarcation between devolved and reserved matters. A central conclusion is that it is crucial for ministers in devolved governments to develop good relationships with counterparts in London, although problems can arise when there are personal tensions, including between members of the same parties. While it was assumed initially that the Scottish and Welsh offices would be the points of contact, ministers in the devolved administrations 'quickly concluded that this was not the most helpful model' (p. 23). Instead they tried to create bilateral relationships in specific policy areas although a complicating factor is that the development of good personal relationships is made difficult by the more frequent turnover of ministers in the UK government, compared with longer periods in office in Scotland and Wales. Indeed Andrew Davies commented that in his two and a half years as finance minister in Wales he dealt with three Chief Secretaries to the Treasury.

An important aspect identified from the interviews is that decisions taken at the UK level can have major 'spillover' effects at the devolved level, with some decisions for England only taken without proper regard for the impact on Scotland and Wales. Financial matters are a major source of tension, not least because of the dominance of the Treasury in budgeting and the operation of the Barnett formula (however Jane Hutt was able to secure reforms to make the system more equitable for Wales, partly by developing good working relationships with other key actors). This was perhaps less of an issue at times of growth in public spending such as in the 2000s but became more crucial in the years of austerity after the 2008 crash.

As the report notes, the whole devolution settlement was predicated on the assumption of EU membership. However a major criticism over the years of membership has been the absence of proper processes for taking account of the interests of the devolved governments on EU matters. The report argues that because Westminster ministers normally provided the UK voice in meetings of the Councils of Ministers (although Lord Wallace refers to an instance when he took this role in a discussion on justice), Scotland and Wales have developed other ways to make their voice heard. First they have sought to influence the UK position on EU matters. A particularly interesting insight here is one minister's comment about the three devolved administrations working together to develop a common position on agriculture for 'quadrilateral meetings' chaired by the UK Defra secretary. Second, the territories have 'tried to strengthen their own position and

voice', for example by setting up offices in Brussels to provide a physical presence, which facilitated liaison with EU institutions and other subnational governments such as Catalonia (p. 30).

Arguably the outcome of the Brexit referendum poses the most serious challenges for the devolution settlements⁴. While there has been much rhetoric about the need for collaboration, there are serious concerns about the extent to which the 'UK' position takes account of the interests of the devolved territories. The formal machinery for discussion between the governments is the Joint Ministerial Committee (JMC), however its effectiveness has been questioned. The report notes some difference of opinion about the usefulness of the JMC, with Lord German for example describing it as little more than a 'talking shop'. The overall conclusion drawn by the report is that 'while the JMC is better than nothing, it is not particularly helpful from a devolved perspective when there are more fundamental differences between the governments' (p. 26).

The weaknesses of the JMC have been brought into stark relief by the negotiations around Brexit. Here its European Negotiations (EN) formation has provided the main forum for discussion but again there has been much criticism of its operation⁵. The IFG report provides further evidence on this, with Scottish and Welsh ministers dissatisfied by their 'limited ability to influence the Brexit process', arguing that attempts by the UK government to involve Scottish and Welsh ministers 'have been insufficient' (p. 31). As Scottish minister Shona Russell is quoted as saying: 'you felt sometimes you were sitting on the naughty step because we were seen as only to be talked to and informed when the need had it' (p. 31). Negotiations over 'common frameworks' in areas such as agriculture and state aid have proved to be particularly tricky. Although the need for such frameworks is generally accepted, there is a lot of unease about the process through which these are to be discussed and agreed. Carwyn Jones has argued for the creation of an independent dispute resolution mechanism and regularly stated that Brexit should not be used by Westminster to claw back devolved powers. Withdrawal from the EU has the potential to completely destabilise, if not lead to the break-up of the UK. As Jones notes, if it is 'done badly' Brexit 'carries with it the seed of the UK's own disintegration. Done well, there's an opportunity for us to recast the UK's constitution' (p. 31).

Conclusion

The aim of this report is to draw lessons from the interviews that can promote effective devolved governance by informing the actions of future ministers. It highlights some of the key factors that contribute to policy effectiveness, and the challenges faced. It concludes first that there will be a continuing requirement for effective negotiation because coalitions and minority governments will remain common; indeed the authors suggest – with some justification – that, if anything, change is 'likely to be in the direction of a more rather than a less proportional system' (p. 32). Second, devolution is here to stay but will have to be continually adapted to changing circumstances, not least as a result of Brexit. Third, that the effectiveness of ministers in devolved administrations requires close liaison with UK counterparts. Indeed one thing that comes through clearly in the report is that while institutional processes and structures are important, equally crucial is the agency of individual actors, not least in developing good working relationships with those in other political parties and administrations.

However the report is by no means comprehensive in its coverage of the salient issues around devolution and there are some areas where more detail would have been useful. For example more could have been said on the observation that there is not much evidence of systematic sharing of evidence and learning between the various administrations. While there are fleeting mentions to a close relationship on the budget between finance ministers and between the devolved administrations on agriculture, it is a pity that there is

not more focus on this sort of collaboration. It would greatly improve the report if there was a much more detailed examination of the relationships between the devolved administrations (including Northern Ireland because while it has had long periods without government ~~it~~ the Assembly did sit for ten years from 2007 until suspension in 2017). The report overall is perhaps a bit too focused on relationships between the UK and the devolved territories to the exclusion of other important aspects of the devolution settlements. Are there areas where the ministers think that devolution has not worked and not lived up to expectations? What for example did interviewees think about the operation of the devolved assemblies and the politics within them? What about the role of stakeholders and territorial policy networks – has devolution opened up new avenues and forms of consultation? Devolution is not just about creating a ‘policy laboratory’ but about taking power closer to the people and enhancing democratic accountability and it seems a missed opportunity that ministers who have served in devolved governments do not really reflect on this.

Overall this is a valuable if rather narrowly focused report that draws on interviews with some of those who have served in devolved governments since their inception. It uses the interviews to highlight some important themes about the workings of the devolved settlements and taken together with the archive of interview transcripts, it provides a valuable resource for those interested in the territorial dimension of UK politics.

¹Paun, A., Kidney Bishop, T., Valsamadis, L. & de Costa, A. (March 2019), *Ministers reflect on devolution: Lessons from 20 years of Scottish and Welsh government*, Institute for Government, London. Available from: <https://www.instituteforgovernment.org.uk/publications/ministers-reflect-devolution>

²Institute for Government, <https://www.instituteforgovernment.org.uk/ministers-reflect/>

³Kilbrandon Report 1973, p. 165

⁴For a discussion of developments since the referendum see Greer, A. (2018), ‘Brexit and Devolution’, *The Political Quarterly*, Vol. 89, No. 1, January–March 2018, pp. 134-138. DOI: 10.1111/1467-923X.12442.

⁵See House of Lords, European Union Committee (2017), *Brexit: Devolution*, 4th Report of Session 2017–19, HL Paper 9, 19th July.