

The role of national identity in determining proposals for devolution in the United Kingdom

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Abstract

This article examines national identity in the three sub-state units of the United Kingdom which were granted devolved powers in 1998 (Scotland, Wales, and Northern Ireland). This article argues that national identity provides a compelling explanation for why powers were devolved asymmetrically, as compared to federal states where powers are generally uniform at the sub-state level.

Introduction

In the context of constitutional evolution, the 1998 reforms that brought about devolution in the United Kingdom were an interesting development. Without capitulating to the demands of nationalist separatists, the central government under Tony Blair's Labour party found a compromise that accommodated distinct national identities and kept the state intact. Devolution in the United Kingdom has followed an asymmetrical path, meaning the transfer of powers was not uniform across all territories. This resulted in asymmetrical autonomy, in which the various territories now enjoy different levels of autonomy (McGarry, 2010: 148). McGarry (2010) writes that there are two different types of asymmetrical devolution evident in the British example: regional asymmetry in the sense that the peripheral territories (Scotland, Wales, and Northern Ireland) enjoy self-government, but the English regions do not; and asymmetry in the powers allotted to each region, including asymmetrical institutions. Of particular interest is the second type, asymmetrical devolution of powers. Unlike in federal states where powers to each region or territory are generally uniform (Keating, 1998: 203; Leyland, 2011: 253), the devolution process in the United Kingdom resulted in Scotland, Wales, and Northern Ireland each having a different level of control over legislative and taxation powers. This essay will focus on the second type of asymmetry identified by McGarry and ask why policymakers chose this particular path of devolution. It will argue that within each territory there existed different levels of distinct national identity, separate from the British national identity. Delanty (1995: 258) identifies two different types of nationalists in the peripheral territories of the United Kingdom: secessionists who do not identify with the overarching identity and seek statehood for the territory; and state patriots who do identify with the overarching identity of the state and wish to remain part of the state. In this essay, the term "nationalist" will be used to refer to those who identify mostly with the distinct identity of their territory, and not the overarching British identity. The varying level of these identities reflected different aspirations for autonomy. For example, a strong sense of Scottish identity in Scotland ultimately resulted in a Scottish Parliament with significantly more legislative powers than the other assemblies. Both Curtice (1999: 143) and Leyland (2011: 259) agree that different levels of distinct

national identity were a significant factor in asymmetrical devolution.

This essay will begin with an explanation of the model of asymmetrical devolution set out in the *Scotland Act 1998*, *Government of Wales Act 1998*, and the *Northern Ireland Act 1998*,¹ paying specific attention to the powers each region were allotted relative to the others. Secondly, it will examine how national identity influenced the debate on devolution in Scotland, and resulted in Westminster devolving more powers and autonomy to that territory than the others. Thirdly it will explain that the Welsh Assembly received fewer powers than the Scottish Parliament due to wider social cleavages, which weakened the distinct Welsh national identity in Wales. Next, the essay will review how nationalistic elements prevented the Assembly of Northern Ireland from being endowed with the same powers and autonomy given to the Scottish Parliament. Lastly, the essay will ponder other explanations for asymmetrical devolution, such as political opportunism.

Asymmetrical Devolution and the Transfer of Powers

Devolution is the process by which power is moved from the central authority to sub-state units (Leeke, et al., 2003: 3). Despite apparent similarities with federalism, there are key differences. In a federal state, there is usual a codified constitution to clearly divide powers between the central authority and the various sub-state regions which make up the federation. Such a legally binding document does not exist in the United Kingdom, and the central government can repeal the various pieces of legislation granting each region these powers just as easily as it can repeal any other act of Parliament (Leeke, et al, 2003:12). Nevertheless, as Bogdanor argues, any attempt to undo the devolution process would likely not pass in the court of public opinion (Cited in Leeke, et al, 2003: 13). The *Scotland Act 1998*, *Government of Wales Act 1998*, and the *Northern Ireland Act 1998* are the laws upon which each legislature of the devolved territories depend for their legal powers (Trench, 2007: 48). The Scottish Parliament can pass both secondary and primary legislation, meaning it can pass laws on any matter with its purview. There are two unique features of the Scotland Act that distinguish it from the Acts that created the National Assembly for Wales and the Northern Ireland Assembly. First, the Scottish Parliament is allowed to legislate on any matter, except in policy areas explicitly reserved for the central government. These include matters that mostly pertain to the whole of the British state, such as the constitution, national security, trade, macro-economic policy, social security, immigration, energy policy, and the relationship with the European Union (Leeke, et al., 2003: 20-1; Trench, 2007: 50-1). The result was that the new parliament was given de facto residual powers (McGarry, 2010:153), meaning it can pass legislation in any other area not included in the list of reserve powers. Secondly, the Scottish Parliament was the only devolved legislature given the power to raise or lower the tax rate by 3 percent (Leeke, et al, 2003: 3). This gives the Scottish government the ability to raise revenues on its own, and not be entirely reliant on Westminster, although this power has yet to be used.

¹ The Scotland Act 1998, Government of Wales Act 1998, and the Northern Ireland Act 1998 have each been amended several times since 1998. Except where specified otherwise, discussion of devolved powers for each of the territorial legislatures refers to the original 1998 Acts.

The National Assembly for Wales does not have residual powers as the Scottish Parliament does. The areas of policy which the Assembly can legislate on are specified and include: agriculture, economic development, education, the environment, health, highways (but not other infrastructure), local government, social services, water, culture, and the Welsh language (Leeke, et al, 2003: 14, 25). In addition to this, the government in Wales cannot make primary legislation. It only has secondary legislative powers, meaning it can amend legislation already passed by the Westminster Parliament, but not propose its own legislation. Along with these limitations, the National Assembly is structured differently from the Scottish Parliament and the Northern Ireland Assembly. While those bodies have an executive directly accountable to the legislature, similar to the structure of the Westminster Parliament, the National Assembly for Wales was created as a corporate body, with the executive and legislative functions within a single legal body (Bradbury, 2009: 194; Leeke, et al, 2003: 7). However, this changed in 2006 when amendments to the *Government of Wales Act* gave the Secretaries of the Assembly similar status to Ministers in the Scottish Parliament (Trench, 2010: 121; Leyland, 2011: 262; Bradbury, 2009: 198).

The Northern Ireland Assembly is different again. It is similar to the Scottish Parliament in that it has an executive which is accountable to the legislative body and can pass both primary and secondary legislation on policy areas devolved to it (Leeke, et al, 2003: 3). However there are three different types of policy areas explicit in the *Northern Ireland Act*. The first is excepted powers that are reserved for Westminster. As with Scotland and Wales, these are areas of policy which affect the entire state. However, in this case areas such as the Assembly's elections, registration of political parties, and the appointment and removal of judges are solely the domain of Westminster (Leeke, et al., 2003: 28). The second type of powers written in the *Northern Ireland Act* is called "reserve powers". These are areas of policy in which the Assembly cannot legislate in, but which Westminster will devolve to the Assembly at a later date only if there is cross-community consent. They include criminal law, policing, the prison system, the power to remove an assembly member from office, emergency powers and civil defence (Trench, 2007: 50-1; Leeke, et al, 2003: 28). The third group of powers are those areas in which the Assembly is allowed to legislate in. These include health and social services, education, agriculture, investment, environment, culture, and regional and social development (Leeke, et al, 2003: 29).

Scottish Nationalism

There is no doubt that there is a strong feeling of a distinct national identity in Scotland. In a series of focus groups conducted by Curtice (1999: 124), 66 percent of people in Scotland reported identifying as "Scottish" first, while 33 percent reported not feeling any connection to a "British" identity. While this itself is not proof of a large secessionist group, it does indicate a lack of connection to the British state. This can be traced back to Scotland's negotiated entry into the state. It was not the victim of expansionism and imperialism like Ireland and Wales (Tomaney, 2000: 676; Gardiner, 2004: 2). Instead it was incorporated slowly, starting in the 1600s, culminating with the Act of Union in 1707 in which Scotland joined the United Kingdom. In the Act of Union, Scotland was allowed to retain its own Calvinist church, Roman-based legal system, education system and local government (McGarry, 2010: 149; Keating, 1998: 196;

Loughlin, 2007: 39). Due to these allowances, Scotland was never fully incorporated into the administrative apparatus of the United Kingdom. It was governed separately and the introduction of a Secretary of State for Scotland and the Scottish Office in 1885 ensured a “distinctly Scottish flavour” to public policy applied in Scotland (Tomaney, 2000: 679). All of this helped to preserve the Scottish identity (Tomaney, 2000: 676). In addition, the rise of Scottish intellectuals such as Adam Smith and David Hume in the latter end of the eighteenth century further increased support for Scottish nationalism (Gardiner, 2004: 18). The early 1900s saw rising nationalism give way to a Scottish Labour Party that encouraged Scottish workers to rise up against the central government (Gardiner, 2004: 16). This nationalist sentiment eventually resulted in the creation of the Scottish Constitutional Convention in 1989, which Trench (2007: 49; 2010: 117) argues was the starting point for Scottish devolution. The convention brought together political parties, trade unions, and community groups to discuss how a future Scottish Parliament should look and operate (Tomaney, 2000: 683; Curtice, 1999: 121).

It was a direct result of this decade-long discussion of devolution that the proposals voted upon in the Scottish referendum gave the Scottish Parliament significantly more power than its counterparts. The Labour Party clearly stated in its 1997 election manifesto that the establishment of a Scottish Parliament would be based upon the principles set out in the Scottish Constitutional Convention (Labour Party cited in Leeke, et al., 2003: 18). The description of power allocation in the beginning of this essay illustrates the power of the Scottish Parliament relative to the other devolved legislatures. *The Scotland Act 1998* gives the Scottish Parliament residual powers, meaning it can legislate on almost any policy area not explicitly reserved for Westminster, unlike the *Government of Wales Act 1998* and *Northern Ireland Act 1998* which place greater restrictions on policy areas these assemblies can legislate on. Even though the Scottish government has not yet used its power to change the tax rate, the fact it can do so gives it considerable more autonomy because it can raise additional revenues outside of what is received from the central government (McGarry, 2010: 154). Neither the National Assembly for Wales nor the Northern Ireland Assembly can do this. A strong executive body of government and the ability to pass its own laws independent of Westminster gave the Scottish Parliament additional autonomy not given to the National Assembly for Wales. The support for this higher level of autonomy was reflected in the referendum results. With over 60 percent of the electorate turning out to vote, the referendum passed by a margin of three to one and reflected the “settled will” of the Scottish people (Leeke, et al, 2003: 18; McGarry, 2010: 154).

Cleavages in Wales

In contrast to Scotland, Wales was annexed in an expansionist conquest by England during the sixteenth century (Gardiner, 2004: 2). Wales did not retain much of its distinctiveness, but was assimilated into the English political, administrative, and legal structures (Loughlin, 2007: 39; Keating, 1998: 196; Leyland, 2011: 260). It was not until 1964 that a Secretary of State for Wales and a Welsh Office was created to tailor legislation and public policy to the territory. Even then, the Office was more limited than the Scottish Office because it could only make regulations following legislation that had already been passed in Westminster’s Parliament (McGarry, 2010: 150). Curtice (1999: 142) argues that his research on identity in the United Kingdom indicates the Welsh

population, as a whole, is less likely to see itself as a distinct nation. In his focus groups, only 43 percent of people said they feel “Welsh” before another identity, and only 17 percent said they do not feel “British” at all (Curtice, 1999: 124-5), far lower than the numbers he reported for Scotland. These results are likely the result of two major social cleavages that exist on a large-scale in Wales but are small in Scotland. The first is language. The 1991 Census reported that a large minority, about 20 percent, of the Welsh population spoke the Welsh language, in contrast to Scotland where only one per cent spoke Gaelic (Office of National Statistics cited in Loughlin, 2007: 46 and Curtice, 1999: 122). The potential problems caused by this language cleavage were evident to those who supported devolution. The original proposal for a devolved assembly in Wales named it as the “Welsh Assembly”, but supporters of devolution changed the proposed name to “National Assembly of Wales” out of fear it would cause alienation between those who spoke Welsh and those who did not. They wanted it to be perfectly clear: this assembly for the all the people of Wales (Trench, 2010: 120).

The second major cleavage in Wales is between those born in Wales and those born outside the territory. Nearly a quarter of the population in Wales was born outside its borders, while in Scotland this number is only about 10 percent (Curtice, 1999: 122). Of those living in Wales but born outside of it, about 80 percent of them were born in England and more likely to have an English or British national identity than Welsh (Loughlin, 2007: 43). Curtice (1999: 122) makes the argument that both of these cleavages weaken national identity in Wales, both in terms of numbers and unity. He also cites this as being a reason for the weak support for devolution (1999: 120). This argument finds credence in the referendum results from Wales on the 1998 proposals. Unlike the overwhelming support for devolution seen in Scotland, in Wales devolution was almost rejected. Only half the electorate turned out to vote, and only 50.3 percent voted in favour of devolution (Leeke, et al., 2003: 22; Curtice, 1999:119).

Without a strong national identity among the people of Wales, the debate for more autonomy was rather limited. There was no equivalent to the Scottish Constitutional Convention for Wales. Likewise, the nationalist party in Wales never had the level of support that the Scottish Nationalist Party (SNP) did in Scotland (Tomaney, 2000: 679). Instead, devolution was only largely discussed after it was proposed by the Labour party, and the debate itself was largely concentrated within the party (Curtice, 1999: 121). As well, Curtice (1999: 138) argues that Scottish nationalists are more likely to be left-orientated, so the debate became increasingly about economic and social equality issues. There was no similar distinction in the ranks of the Welsh nationalists, so the debate did not take on a unique Welsh flavour, unlike in Scotland. As a result of this, the *Government of Wales Act* gave far fewer powers to the National Assembly for Wales than was given to the Scottish Parliament. McGarry (2010: 154) goes so far as to suggest that, arguably, Wales did not gain any level of autonomy due to the fact that the Assembly was not given the power to pass primary legislation. While this may be a more extreme analysis, it is clear that level of autonomy exercised by the National Assembly for Wales is limited in comparison to the Scottish Parliament. In particular, without revenue raising powers, the spending of the Government of Wales is restricted by the amount it receives from the central government. This coupled with the lack of primary legislative power allows Westminster considerable more control over the National Assembly.

The Unique Case of Northern Ireland

Northern Ireland is a unique case in this analysis. Unlike in Scotland and Wales where secessionist nationalists want an independent state, nationalists in Northern Ireland see themselves as part of an Irish nation that exists across borders (McGarry, 2010: 157), and want to see the territory become reunited with the Republic of Ireland. Over the years there has been much conflict between the minority Republican nationalists and the majority Unionists who want deeper integration into the state due to their feeling of 'Britishness' (Delanty, 1995: 257-8). The deep division between these communities goes back to the time when the Republic of Ireland was a colony of Britain. Although allowed to keep its own legal code, the colony was governed under emergency legislation from Westminster, and Ireland's Members of Parliament were not allowed to be members of the majority Catholic faith (McGarry, 2010: 150). The Republic of Ireland achieved independence in 1921. However the island was partitioned due to a large minority of Protestants concentrated in the northeast of the island that identified as British and wanted full integration with the United Kingdom (Tomaney, 2000: 678). This partitioning of the island angered many Republicans, and the more radical formed the Irish Republic Army (IRA). The IRA terrorized Northern Ireland, claiming any element of the British state was a legitimate target, such as the police force and army (Tomaney, 2000: 678). An early attempt at devolution in Northern Ireland attempted to end the violence. However the Republicans were unhappy with the arrangement, and eventually the violence restarted. Thus in 1972 the central government in Westminster took direct control of the territory once again using emergency legislation (McGarry 2010: 151).

The Belfast Agreement aimed to find a solution to the problem of Northern Ireland. The Framework Document of 1995, which laid the groundwork for the Agreement three years later, had three key proposals: an assembly for Northern Ireland, the legal right of the people of Northern Ireland to hold a referendum on their future, and cross-border institutions to increase cooperation between the British and the Irish on matters of Northern Ireland (Delanty, 1995: 257). All three of these principles were incorporated into final agreement. As a result, the Assembly of Northern Ireland is an example of consociational democracy (Bradbury, 2009: 195). Parties identify themselves as belonging to one community group or the other. The executive government must include members of both communities and two heads of government with equal power to represent each community (Leyland, 2011: 262-3). As a result, any government decision must have support in both communities. The Belfast Agreement was greeted with overwhelming support from the Northern Ireland electorate. With a turnout of over 80 percent on voting day, 70 percent voted in favour of the proposals contained within the agreement (Leeke, et al., 2003: 27; Tomaney, 2000: 683). The strong support for the agreement across both communities can be partly explained by concern in both Republican and Unionist ranks. Delanty argues that a lack of economic importance and a declining ideological incentive has led both the British and Irish governments to show increasing indifference toward Northern Ireland. Realizing that they could lose the support of their respective nations if the agreement failed forced the deeply divided communities to work together (Delanty, 1995: 261-2). In fact, Leyland argues that the supranational institutions created by the Agreement were to placate these concerns (Leyland, 2011: 263).

As in Wales, wider divisions and a greater balance of competing national identities, resulted in an assembly with fewer powers. Although the *Northern Ireland Act* lays out powers that could be transferred at a later date, due to the historic tensions between the two communities, the Assembly is still very limited. For example, it cannot legislate on matters of policing and criminal law and it cannot raise its own revenue by changing the tax rate (Leeke, et al., 2003: 7). Despite the limit on legislative areas, McGarry (2010: 156) suggests the Northern Ireland Assembly is actually the most powerful of the three because it allows for a referendum to decide if the territory should leave the United Kingdom. Such a provision was not included in the *Scotland Act* or the *Government of Wales Act*.

Counter theories – Political Opportunism?

An alternate way of looking at asymmetrical devolution would be to view it as a purely political exercise. Bradbury points out that when Tony Blair became leader of the Labour Party in 1994, the party had been out of power since 1979, but retained strongholds in both Scotland and Wales, where calls for devolution were increasing (2009: 192). During the Thatcher and Major years, Scotland and Wales elected few Conservative Members of Parliament, but were forced to abide by legislation coming out of Westminster (Curtice, 1999: 137). McGarry (2010: 59) notes that Welsh and especially Scottish left-leaning traditions clashed with the Conservatives neoliberal policies. Devolution was seen as a way to gain autonomy from a central government that had little support outside England. By including devolution proposals in its 1997 election manifesto, Labour was simply looking for votes to win a majority. With Scotland having more seats in Parliament than Wales and Northern Ireland combined, this seems like a plausible explanation.

However Keating (1998) pokes holes in this argument. He points out that no party has ever had a working majority in Parliament because of seats from Scotland and Wales (1998: 199). In addition, this argument fails to recognize that, at least in the case of Scotland, desire for some form of autonomy from the central government predated Blair's leadership of the Labour Party. If the nationalists in Scotland had not actively promoted this goal for many years, it would not have been featured in Labour's manifesto. Thus ultimately national identity is the underlying reason for asymmetrical devolution.

Conclusion

As shown in this paper, national identity had a significant influence on the devolution process, ultimately resulting in an asymmetrical transfer of powers. Each territory exhibits cleavages in national identity between the secessionists who want independence (or in the case of Northern Ireland, to join another state) and patriots who want to remain within the British state.

In Scotland, the electorate was offered a greater level of autonomy from Westminster, and they overwhelmingly voted in favour of those proposals. In contrast, the Welsh electorate was offered a watered down version of devolution, and the referendum passed by only a slim majority. Several factors can explain this. Wales has a large minority of Welsh speakers and a small majority who identify as British first, and Welsh second or not at all. Such cleavages are significantly smaller in Scotland. Secondly, the Scottish

debate over devolution was longer and more profound due to the creation of the Scottish Constitutional Convention years before, while the debate in Wales originated largely within the Labour Party in the years leading to the 1997 general election. All of these influences go back to the differences in national identity. With a greater sense of distinctiveness than Wales, Scotland was demanding greater autonomy and the Blair government tailored devolution to meet those demands.

Northern Ireland was a slightly different case. Like the other territories, there is competition between different national groups, British Unionists and Irish Republicans. Unlike the others, this competition turned to sectarian violence after Northern Ireland was established as a British territory. Insecurities within each community and concerns that one group might come to dominate the other, despite safeguards, resulted in an assembly with noticeably fewer powers.

The implications of all this are interesting. There seems no doubt that the United Kingdom is moving toward a constitutional structure that is more federal or regional than the unitary form of which it is often described. Yet the research presented here shows varying nationalist sentiment in the three peripheral territories forces the central government to adopt a considerable level of asymmetrical power transfer. If the United Kingdom is to move toward a fully federal or regional state, this problem will be harder to overcome than if the issue was merely a lack of political will. In addition, giving the Scots an assembly more akin to a Westminster-style parliament has given the separatists a louder voice, as hinted at by Keating (1998: 206, 212). Indeed Scotland is now preparing for a referendum on independence (BBC News, 2012a), while the Welsh have also pushed for an assembly more like the Scottish Parliament (BBC News, 2012b; Trench, 2010: 128). Regardless of the outcome of the Scottish referendum, finding a balance between national identity and autonomy for the territories will be a concern for future British governments.

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