

Devolution in the United Kingdom: Problems of a Piecemeal Approach to Constitutional Change

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The UK's devolution reforms have been piecemeal, directed at specific territorial issues in one or other part of the UK, and poorly coordinated with one another. While this piecemeal approach reflects a centuries-old approach to territorial statecraft in the UK, the addition since 1999 of democratic process and, more recently, partisan conflict between UK and devolved government, has established strong centrifugal tendencies. The article explores how territorial policy variation, inter-regional spillovers, the fusion of UK central government institutions with those for governing England, contradictions in public opinion, and under-institutionalized intergovernmental relations underline that centrifugal dynamic. Most significantly there has been no sustained attempt to review and renew the purposes of union since devolution.

The UK's devolution reforms are idiosyncratic. The devolved institutions in Scotland, Wales and Northern Ireland have different sets of competences and have distinctive institutional forms and *modi operandi*. The Scottish Parliament has full legislative powers over wide fields of domestic policy which are generally neatly demarcated from those powers that remain "reserved" to the UK Parliament. The Northern Ireland Assembly has a similar scope of powers, but these are exercised through a system of power-sharing government designed to bind a divided society and embedded also in the international relationship between the UK and the Republic of Ireland. The National Assembly for Wales has a much more interdependent division of labor with the UK Parliament in drawing up legislation for Wales. The other, and by far the biggest component part of the UK, England, has no devolution at all beyond the modest administrative functions of the Greater London Authority.

Yet despite these idiosyncracies the UK's devolution reforms are in other ways characteristic of a wider trend in constitutional debate in developed democracies: the emergence of territorial questions as the "major sources of demands for constitutional change," superceding earlier debates driven by class cleavages and

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relationships (Banting and Simeon 1985, 11). One of the most striking political trends of the last thirty-plus years has been the decentralization of government within developed democracies. Marks et al. (2008) show in their comprehensive index of regional authority in forty two democracies in the period 1950–2006 that “regional authority”—a combined measure of regional-level democracy, policy competences, tax-raising powers and role in co-determining central government policy—was broadly stable from 1950 to 1970, but since has grown steadily (especially in terms of the growth of elected regional assemblies and the widening of regional policy competences). Of the forty-two states in the index, twenty-nine have become more regionalized, and only two (marginally) less regionalized. Of 384 individual reforms to regional authority tracked from 1950–2006, 342, or eighty-nine percent, were increases to regional authority.

The stakes raised by this growth in regional authority are high; as Banting and Simeon (1985, 11) put it back in 1985, they concern “the character of the political community itself.” Political community has in most cases a territorial claim; in other words people with shared interests or identities lay collective claim to a particular territory. And the collective authority of a political community is conventionally organized through political institutions whose decisions have a limited territorial reach, that is, within the territory concerned, but no further. What Marks, Hooghe and Schakel track in their index, and what Banting and Simeon had identified over twenty years ago as the major catalyst of constitutional change, is a process of differentiation of political community between the state as a whole, and the political communities of its component parts. That process presents a challenge to postwar conceptions of the “nation-state,” which presupposed the integration of the mass population into political life on a statewide scale. What appears now to be under way is a partial disintegration of the mass population into territorial communities within the state, at times challenging the integrity of the state, but generally accommodated within the state in a reconfiguration of the constitutional relationship of parts and whole.

This article explores the devolving UK state as an example of this partial disintegration, or “denationalization” of political community. Devolution is both a response to changes in political community in the UK, and a challenge about the future character of that community. It responded to perceived problems in Scotland, Wales, and Northern Ireland surrounding the legitimacy of a UK political system concentrated on political institutions in Westminster and Whitehall. The challenge it has unleashed was exemplified in the processes of government formation following the third round of devolved elections in spring 2007. Scotland now has a government run by a party, the Scottish National Party (SNP), which is committed to Scottish independence and published a White Paper in August 2007 setting out how it envisaged achieving either that goal, or at least an extension of current devolved powers. In Wales, the nationalist Plaid Cymru (in English: Party

of Wales) entered government for the first time as coalition partner of a weakened Labour Party, with the subsequent coalition agreement envisaging a referendum on full legislative powers, that is, the (current) Scottish model of devolution, by 2011. And the Northern Irish government formed in 2007 is co-led by a party, Sinn Fein, committed to the unification of the island of Ireland.

These election outcomes demonstrate that the territorial configuration of political community in the UK remains contested. They also give the lie to claims made by some of the architects of Scottish devolution that the reforms would embed a “settled will” of the Scottish people (the phrase widely attributed to the leader of the UK Labour Party from 1992 to 1994, John Smith), or even “kill nationalism stone dead” (as George, now Lord Robertson put it when he was Labour’s Scotland spokesman in the run-up to the 1997 UK election). More accurate was the telling phrase of Ron Davies, the UK cabinet minister who piloted through the Wales devolution legislation, that devolution was a “process, not an event” (Davies 1999); it was not a one-time enactment of constitutional change, but rather a dynamic whose trajectory was open and whose endpoint was unclear. This article takes the Davies view further. It argues that devolution has opened up, rather than “settled” the scope for debate about political community in the UK, leaving the different purposes and inter-relationships of structures of government representing different scales of political community at the devolved and UK levels in disequilibrium.

The article explores why equilibrium has been elusive. The first section sets out the institutional logic of a reform process which was conceived and enacted in a piecemeal and uncoordinated way. That logic has introduced a centrifugal dynamic to the territorial politics of the UK. The second section explores a number of problems that piecemeal reform has opened up. The final section discusses the failure so far at devolved and UK levels to develop arguments which reconcile the devolution of powers to smaller political communities with the purposes and benefits of statewide union. The UK lacks, in other words, a “constitutionalism,” a set of generally shared, normative understandings of the purposes of the political system which establish parameters for reconciling competing pressures of diversity and unity in the UK’s constitution.

Devolution as Piecemeal Constitutional Reform

The absence of a normative statement of purpose for the post-devolution state is rooted in a distinctive UK constitutional tradition. The UK is a constitutional law unto itself. In drawing up a typology of constitutional models worldwide, Elazar (1985, 234–235) had to reserve one of his five categories—that of the “modern adaptation of an ancient traditional constitution”—effectively for the UK alone (though he did see some equivalences in Israel and post-1979 Iran). The UK’s territorial constitution, that is the arrangements for managing the relationships of

the nations that make up the UK, is a striking example of how centuries-old practices have been gradually attuned to changing circumstances. It projects forward a tradition of territorial statecraft which, over centuries, has institutionalized territorial differentiation in the organization of public administration and delivery of public policy in the UK.

In other words the UK has always been a territorially asymmetrical state. Though unusually far-reaching power resides in the “sovereign” Westminster parliament, that power has never been used (in contrast, say, to French unitarism) to create a territorially uniform state. Adapting the terminology of the “union state” (Rokkan and Urwin 1982), Mitchell (2006a) has dubbed the UK a “state of unions” in which different terms of membership of the UK state were struck (re-struck in the case of Ireland/Northern Ireland) between a dominant England and the other nations at different times and in different political contexts: the annexation of Wales by England from 1536; the treaty of union of Scotland with England to form Great Britain in 1707; and the union of Great Britain with Ireland to form the United Kingdom in 1801, which was then remade with the partition of the rest from the six counties of Northern Ireland in 1921. The territorial arrangements for the administration of UK laws outside England reflected and embedded those different terms of membership. By 1997, those arrangements were carried out mainly through UK central government departments for Scotland, Wales and Northern Ireland, the Scotland, Wales and Northern Ireland Offices. These were cabinet-level departments with a remit of policy implementation in their respective nations. There was no equivalent territorial department for England.

Constitutional Moments #1: the Mid-1990s

The devolution reforms are the latest iteration of this tradition of statecraft, the latest example of a tradition of asymmetry in the territorial constitution. Accordingly they were not approached as a comprehensive, integrated reform of the UK state, but as a series of disconnected responses to changing, and different, demands about how the unions of Wales and Scotland with England, and Northern Ireland with Great Britain, should be renewed. Those demands were articulated within territory-specific settings, each culminating in constitutional “moments” (Simeon, 2009, in this special issue) which, while coincident in timing in the mid-1990s, had separate causes and trajectories.

In Scotland devolution was preceded by well over a decade’s campaigning, notably in the Scottish Constitutional Convention, which argued for the restoration of decision-making powers “home rule” to a political community made distinctive by an enduring sense of national identity and its growing dissatisfaction with government by a remote and apparently unresponsive UK Parliament in

Westminster. That campaign evoked a distinctive, if largely mythical Scottish constitutional tradition, notably a “claim of right” to popular sovereignty as distinct from the updated form of monarchical sovereignty embedded in the wider UK constitution. The Constitutional Convention was in one sense notable for its broad base in Scotland, including the formal support of both the Labour Party and the Liberal Democrats (with formal opposition, but tacit endorsement from the pro-independence SNP), and input from Scottish civil society, including trade unions, churches, academics, and others (Wright 1997). But in another sense it was an echo of partisan politics at the UK level, with a UK Labour Party frustrated by the Conservative’s grip on power in Westminster after 1979 seeing devolution as a means of making its enduring position as strongest party in Scotland count. Labour’s support for devolution was entrenched by the personal commitment of John Smith, long the leading Scottish figure in the party, and UK party leader from 1992 until his sudden death in 1994. The Convention’s final proposals (Scottish Constitutional Convention 1995), issued after Smith’s death but still invested with his moral authority, became the basis of Labour’s devolution policy on Scotland as it entered government following the landslide victory of May 1997. They were reflected in the White Paper published shortly after that victory, endorsed by a clear majority in the September 1997 referendum, and enacted in the 1998 Scotland Act that established the Scottish Parliament.

The vigour and broad base of the Scottish devolution debate was not matched in Wales. Although there were commonalities with Scotland, in particular a sense of alienation from a UK political system dominated since 1979 by a Conservative Party that was lamentably weak in Wales, these did not sustain the same kind of pro-devolution mobilization as in Scotland. There was less of a sense of a distinctive all-Wales political community in which resentments could be mobilized. Welsh national identity was weaker than in Scotland, reflecting a longer history of institutional assimilation into England, and complicated by its interconnection with a Welsh language spoken widely only in parts of Wales. And the Labour Party in Wales (which was even more dominant than in Scotland) was suspicious of devolution, with strong factions seeing continued central government as the best way of delivering compensation for a structurally weak economy. In these circumstances, devolution was less driven by push-factors in Wales than pull-factors focused on emulating developments in Scotland. The devolution proposals that emerged were essentially the product of back-room deals in the Labour Party brokered, against considerable internal opposition, by Ron Davies, Labour’s Wales spokesman in opposition prior to 1997. The result—endorsed by a wafer-thin majority in the 1997 referendum—was a compromise at a low common denominator which gave the new National Assembly for Wales far weaker powers than the Scottish Parliament. It also embedded the National Assembly in a complex relationship with the Westminster Parliament which was both deeply intransparent

and limited the Assembly's decision-making autonomy. What has followed, unsurprisingly, has been an "uninterrupted... constitutional debate" (Rawlings 2003, 85) focused on schemes for adjustment and improvement of the devolution arrangements.

In Northern Ireland, devolution had an entirely different rationale. The constitutional moment for devolution there arose from "the peace process": a series of initiatives designed to pacify conflict in a divided society which had gathered pace under the Conservative government of John Major in the mid-1990s and was taken forward by Tony Blair's Labour government after 1997. The aim was to provide stable political structures with local accountability which could contain inter-communal conflict between pro-British Protestants and pro-Irish Catholics, remove the need for "direct rule" from Westminster, and open up new possibilities of north-south cooperation on the island of Ireland. The devolution proposals enacted in 1998 resulted from twin tracks of negotiations: internationally between the UK and Irish governments, with considerable input also from the USA; and locally between representatives of Northern Ireland's political parties elected to a special Northern Ireland Forum in 1996. The outcome—set out in the April 1998 Belfast Agreement—established a form of devolution not unlike that in Scotland in terms of powers, but with a very different, consociational institutional structure. That structure, which requires proportional government and high levels of cross-community agreement between political parties has not been easy to operate, was periodically "suspended" (and replaced by direct rule from Westminster) through to October 2002, then suspended for a full five years until 2007.

England was, historically, the odd nation out in the UK's territorial constitution. As the core territory of the UK, around which the union had expanded, it had not had an explicit tradition of territorial administration. Rather it was governed more or less uniformly by UK central government departments also carrying out wider territorial roles. Nonetheless England also experienced a (much more modest) constitutional moment in the mid-1990s. A number of proposals had emerged in the Labour Party while in opposition before 1997 which envisaged some kind of regionalization of England. These led to a number of institutional reforms which strengthened Whitehall's coordinating role in policy implementation in the regions, and established Regional Development Agencies overseen by Regional "Chambers" of local government and regional interest groups (Sandford 2005). However, Labour was never able to build a general agreement on the purposes of policy in the English regions (except in re-establishing London-wide government), nor as a result a sense of priority. So while proposals for elected regional government were flagged in the 1997 Labour election manifesto, these were not firmed up until 2002, envisaged very limited administrative powers, and were rejected by four to one in the only region—the North East of England—to which they were put to the test in

a referendum in 2004. Since then the Labour government has abandoned any commitment to elected regional government.

Enacting Constitutional Reform

These territorially distinctive debates, each contributing coincident constitutional moments of varying intensities, were the basis of a set of territorial constitutional reforms implemented with unusual speed. Devolution was in two senses very easy to introduce. The first reflects the constitutional doctrine of the sovereignty of parliament: there is no category of constitutional legislation in the UK requiring a qualified majority in parliament or any other special measures or safeguards. Though each devolution reform has been preceded by a referendum in the territory concerned, popular endorsement was not a formal constitutional requirement; in principle a fifty-one percent vote in favour at Westminster would have been enough. Labour, elected by a landslide, won sixty-three percent of Westminster seats in 1997, giving it enormous scope to implement constitutional change. So, in a tempo that stands in marked contrast, say, to the glacial processes of constitutional reform in Germany, it took just two years to move from draft legislative White Papers to the inauguration of new devolved institutions in Scotland and Wales in 1999, with the Northern Ireland reforms implemented on an even quicker timescale.

The second reason for the ease of introduction of devolution was the way it built directly on pre-1997 patterns of differentiated territorial administration outside England. What devolution did was to transfer the different sets of territorial competences formerly exercised from within central government by the territorial departments to separate devolved governments established by new electoral processes. It transformed a system of territorial *administration* indirectly accountable through UK elections, into one of territorial *politics* in which new Scottish, Welsh and Northern Irish democratic processes co-exist alongside that at UK level. These changes left the UK central government responsible for a residual mix of UK-wide and England-specific functions, and left England as the only UK territory with unitary, centralized government.

Two significant consequences arise from projecting this tradition of differentiated territorial administration forward into the structure of devolution. The first is that devolution was approached in piecemeal manner. Different UK government departments introduced institutional reforms defined by the historical scope and purposes of territorial administration in each of the non-English nations. As a result devolution has been a project of the parts, not the whole. This fragmented approach to devolution projected forward the conventional statecraft of the “state of unions”; each part outside England traditionally had, and after 1997 continued to have, its own distinctive relationship to the UK central state.

The pattern of fragmentation was probably exacerbated as a consequence of the death of the committed devolutionist John Smith. Smith may well have given close personal attention to devolution had he led Labour back into government; but his successor, Tony Blair, had limited interest in devolution, seeing it as little more than an unavoidable inherited commitment, and giving it no sense of strategic importance across his government. Out of this mix of traditional statecraft and Blair's disinterest the devolution reforms were introduced with limited coordination across the various UK government departments that introduced them. There was next to no consideration of how reform in one part of the UK might have implications in any other part of the UK. And there was negligible thought about the systemic properties of the post-devolution state, that is the relationships between UK and devolved tiers of government, including mechanisms for resolving conflict or for agreeing and implementing common objectives.

The second consequence of the territorially fragmented approach to devolution concerns the rump territory not affected by devolution reforms, which is England. England remains administered directly by functional departments of UK central government (health, education, transport etc.) which mix (in largely unplanned ways) UK-wide and England-specific functions. The failure, beyond the Greater London Assembly (which has only modest responsibilities in policy coordination), to regionalize the government of England means that a centralized England will remain the preponderant part of the UK for the foreseeable future. The devolved nations together account for just fifteen percent the UK's population and gross domestic product and England the rest. The post-devolution UK state is strikingly lopsided. Few other states have the same pattern in which the preponderant part is governed centrally while the peripheral parts have significant devolved powers. That lopsidedness creates both challenges of coordination across jurisdictions and raises new questions about "the English" and the representation of their interests in the post-devolution state.

Constitutional Moments #2: the Mid-2000s

The different rationales and pressures for devolution in the different parts of the UK, the piecemeal approach to enacting reform, and the questions of balance surrounding England did not add up to a recipe for institutional stability. Indeed, by the mid-2000s a second set of constitutional moments appeared to have emerged, each again largely contained within territory-specific debates. The SNP victory in the 2007 Scottish Parliament election crystallized a growing debate about the adequacy of the existing powers of the Scottish Parliament which had focused in particular on arrangements for financing the expenditures of the Parliament (Jeffery and Scott 2007). A renewed focus on constitutional reform has resulted, carried out in two forums: the SNP's "National Conversation,"¹ a consultation

process on its 2007 White Paper on Scotland's constitutional future, including the option of independence; and the unionist parties' response, the Commission on Scottish Devolution² set up in April 2008 to explore options for further-reaching devolution, but excluding the option of independence.

In Wales the limitations of the initial devolution arrangements set in motion a persistent and as yet unresolved debate about the form devolution should take, which has included: an internal Operational Review of the Assembly in 2001–2002; a Commission on the powers and electoral system of the Assembly which sat from 2002 to 2004 and proposed, *inter alia*, a move towards the fuller Scottish model of devolution; a White Paper in 2005 and a new Government of Wales Act in 2006 which took forward some of the Commission's recommendations, extending the Assembly's current powers and setting out a process by which it could seek to move to the Scottish model; and the establishment in 2008 both of an All-Wales Convention³ charged with "preparing the ground" for a possible referendum on a Scottish model of devolution, and an Independent Commission on Funding and Finance⁴ focused on territorial financial arrangements.

Of the devolved nations, only in Northern Ireland has there been no further, major debate about constitutional change. This does not reflect a wide consensus on the adequacy of the current arrangements, but rather the unwillingness of some of the parties to the Belfast Agreement to revisit what was so painstakingly negotiated in 1998, and a concern not to destabilize the operation of devolved government relaunched, so far successfully, in 2007. Few would bet, though, that the government of Northern Ireland has achieved enduring stability.

There are signs too that question marks now hang over the government of England, which has seen renewed constitutional debate, though in a different form than in the mid-1990s. This debate has focused not on the failed Labour agenda of devolved regional assemblies, but rather questions of inequity between England *as a whole* and the devolved nations, in particular Scotland. Perceived Anglo-Scottish inequities have increasingly energized the conservative media. One outcome appears to be a firming up of the Conservative Party's commitment to review how the UK Parliament distinguishes and deals with England-only business, and puts it beyond the influence of Scottish MPs, as "compensation" for devolution in Scotland. The potential that England too might become the subject of territorial constitutional reform has grown with the increasing likelihood that the Conservative Party under David Cameron will displace Labour at the next UK election, which has to be held by mid-2010 at the latest.

Problems of Piecemeal Devolution

The UK's territorial constitution is still, a decade past the initial devolution reforms, in ferment, with new debates about how best to govern England ranged

alongside renewed debates about reforming the structures of devolution in Scotland and Wales. This section offers a series of interlinked explanations for this failure to achieve equilibrium. They all have to do with the piecemeal way in which devolution was introduced. Indeed it would be hard to identify any other example of such significant territorial constitutional reforms which have been conceived and implemented in such a patchwork way and with such little consideration of their statewide implications as has devolution in the UK. The effect has been to compartmentalize the territorial politics of each of the UK's component nations from one another, and to inhibit any genuine consideration of the combination of extensive devolution outside England and continued centralization within England as an integrated *system* of government. There are five ways in which piecemeal devolution appears problematic:

Unmanaged Divergence

First, it has logic of unmanaged divergence, or what Greer (2007) has called a “machinery” for territorial policy divergence. The structure of devolution is unusually permissive of policy-making autonomy in each of the component parts of the UK. In Scotland and Northern Ireland devolution is based on the separation of devolved legislative powers from those of the UK parliament (and in Wales a more modest initial form of devolution, now boosted with greater legislative scope by the 2006 Government of Wales Act, is heading in the same direction). Within the framework of devolved powers there is in principle unlimited discretion, with no provision for the UK parliament to require minimum standards or set framework conditions to achieve UK-wide objectives. That high degree of policy-making autonomy is underlined by a system of territorial finance which awards an unconditional block grant to the devolved administrations, again lacking any mechanisms for pursuing UK-wide objectives, and a system of intergovernmental relations which lacks structure and sanction.

That permissiveness is amplified by the different dynamics of government formation produced by the distinctive party and electoral systems in operation outside England. In Scotland and Wales the classic left-right axis of party competition is supplemented by an additional axis of nationalism versus union. The presence of nationalist parties exerts a pull on the UK-wide parties (Labour, Conservative, and Liberal-Democrat), giving, say, Labour in the Scottish Parliament a different strategic landscape to negotiate than Labour in Westminster (cf. Hopkin and Bradbury 2006). That is especially the case given the weakness of the Conservatives in Scotland and Wales and the broadly social democratic platforms of the SNP and Plain Cymru, which together serve to locate the centre of gravity of party competition to the left of that at Westminster. The broadly proportional electoral systems used in Scotland and Wales underline the strategic pull away from

UK-level party considerations by requiring greater degrees of cross-party cooperation in the coalition and minority government situations that both Scotland and Wales have experienced. In Northern Ireland there is an entirely distinctive, local party system and a form of proportional government which in principle favours a politics of localism rather than engagement with the wider issues at play in UK politics.

The outcome of this permissive institutional and political context is a growing degree of territorial policy variation. Devolution was of course intended to open up the prospect of distinctive policies that would better reflect preferences in the devolved nations. But the absence of counterbalancing mechanisms to define and pursue UK-wide policy objectives can produce tensions where the permissive scope for autonomy appears inconsistent with the common citizenship which membership of a union implies. A number of issues, especially in the last two to three years, have prompted cross-border controversy between Wales and England and, especially, Scotland and England: the different regimes for National Health Service prescription charging on either side of the Welsh/Scottish and English borders (with Welsh/Scottish policy more generous); the funding by the public purse of residential care for the elderly in Scotland, but not in England; and on university tuition fees. The SNP government in Scotland has now abolished all fees for Scottish students at Scottish universities, while fees at English universities seem set to rise further. That Anglo-Scottish difference is given additional potency by the practice of levying fees on English residents to study at Scottish universities while, in order to comply with rules on *international* mobility across the EU, students from other EU member states share Scottish privileges of free higher education denied to the English in Scotland.

Two issues emerge from such examples, which are both examined further below: public opinion across the UK does not appear to endorse divergent policy outcomes; and the piecemeal approach taken to devolution means there is no institutional structure capable of recognizing and regulating the tension between the expression of distinctive devolved preferences and the realization of common citizenship rights irrespective of location.

Displacing Legitimacy Problems

A second feature of piecemeal devolution is that of “displacement” (Mitchell 2006b) of legitimacy problems. Because the devolution reforms were each introduced in a self-contained way to address a problem in one part of the UK, they were blind to the possibility that there might be spillover effects on other parts of the UK. Devolution was introduced in Scotland to restore for Scots the legitimacy of UK government. And it has done so. Devolution is consistently the

leading constitutional preference of the Scots at fifty per cent-plus, the Scottish Parliament is much more trusted to act in Scots' interests than the Westminster parliament, and Scots would rather see Westminster's influence in Scotland fall, and the Scottish Parliament's grow, further (Jeffery 2008).

However, there has emerged a growing sense in some parts of political, media, and public opinion in England that Scottish devolution is unfair to the English, in terms of the distribution of public spending and of political representation. Piecemeal devolution may in other words solve one problem, but end up creating another. For historical reasons not driven by measures of objective spending needs, there is significantly more public spending per head in Scotland than in England, although Scotland now comes in at fourth place (out of twelve) in the UK's regional economic league tables, behind only the booming regions of south-east England, and far ahead of Wales, Northern Ireland and the regions of northern England (Adams and Robinson 2005, 142). For that reason there is now a groundswell of support across political parties and in public opinion for revisiting the terms of financing devolved spending: for example, full three quarters of the English respondents interviewed in the British Social Attitudes survey of 2007 think that the spending of the Scottish Parliament should be "paid out of Scottish taxes" (Curtice 2008). That view has particular resonance given the cross-border policy divergences noted above, which appear to give Scots benefits denied to the English, but are paid for indirectly by fiscal transfers from English taxpayers to Scotland.

These issues have given added spice to long-standing concerns over the impact of devolution on equitable representation. These concerns focus on the so-called West Lothian Question, that is the capacity of Scottish Westminster MPs to vote on, say, health policy for England, while English MP's cannot on health policy in Scotland, because health policy there is a devolved responsibility beyond Westminster's remit. One proposed remedy—periodically advocated by prominent figures in the Conservative Party, most recently in a report of the Conservative Democracy Task Force (2008) led by the former cabinet minister Ken Clarke—is to exclude Scottish MPs from voting on England-only business at Westminster. Whether this would be a workable solution is unclear (Hazell 2006); and in any case it might end up creating further grievances by establishing Scots as "second class" members of the UK parliament. Adding piecemeal reform onto piecemeal reform may not be a recipe for equilibrium.

The Problem of "Anglo-UK"

The third and perhaps biggest problem of piecemeal devolution is the eighty-five percent "rump" of England. England is governed by central institutions in Westminster and Whitehall which combine England-only and UK-wide roles.

Within the framework of a UK single economic market, a single welfare state and a single security area it is inevitable that decisions taken for the preponderant part of those single areas will have impacts outside of England. A striking example emerged during the 2005 UK election campaign, when healthcare performance indicators designed for England shaped the election debate in Scotland and Wales, even though they are issues of devolved competence and beyond the remit of UK-level politics. Another concerns policies on immigration in Scotland. Successive devolved governments in Scotland have been committed to an immigration policy to counter population decline, but remain dependent on a UK government reluctant to allow territorial flexibility to a UK immigration policy increasingly understood in policy debates in England as a matter of internal security not population replacement.

Many of these English spillovers are inadvertent, reflecting the preoccupations of UK government departments with England as “core business” and an inadequate mainstreaming of devolution sensitivity in civil service training programmes. Some also reflect the UK-wide agenda-setting capacity of a highly centralized media industry whose main focus is on Westminster politics (which explains how English healthcare indicators went out-of-area to Scotland and Wales in 2005). As the Scottish journalist Douglas Fraser (2008, 13) put it:

More than in any similar large country, the national conversation is mediated by people who do not get out of its capital city enough. Is it possible that London, in establishing itself as the most cosmopolitan and outward-looking of world cities, suffers simultaneously from metropolitan myopia about its own hinterland?

This powerful pull of the metropolis may explain some of the myopia that the “Anglo-UK” centre displays towards the devolved nations. But there are also examples where Anglo-UK has more wilfully acted against devolved interests, normally when early sight of a policy initiative of the UK Labour government which had implications for Scotland fell into an area for which the Liberal Democrats provided the responsible minister in the 1999–2007 Labour-Liberal coalitions in Scotland (cf. Aron 2007). In the latter circumstances the instincts of adversarial politics at Westminster (not sharing information with a Westminster opposition party) collided with the need for coordination across levels of government (which may require cross-party cooperation). Needless to say this was not a promising foundation for cooperation between the UK Labour government and the SNP minority government elected in Scotland in May 2007. Unsurprisingly, the indications are since then “that officials are finding it increasingly difficult to smooth the way when such issues (disagreements) arise, given the lack of political consensus from politicians

in the two governments” (Trench 2008, 62). A number of cross-border disputes have resulted.⁵

Contradictions of Public Opinion

The ways in which cross-border controversies, and the broader consequences of piecemeal devolution resonate with public opinion are complex, not least because UK citizens have contradictory ways of expressing political community. In some respects public opinion across the UK is borderless. With few exceptions there are at best marginal differences in the values that the Scots, Welsh, Northern Irish, and English hold on the role of the state or the balance of market and state (Table 1), or on preferences on some of the headline issues which have seen cross-border policy variation between England and Scotland since devolution like free personal care for the elderly or tuition fees (Table 2). Though the data are more complete for more recent years, that pattern of broad uniformity in values and preferences appears to be an enduring one (McLean and McMillan 2005, 195–196). And most people across the UK appear to dislike the idea that policy standards might diverge from place to place as a result of devolution (Jeffery 2007, 66). To put this another way: devolution in Scotland, Wales and Northern Ireland did not reflect public demand for a different policy agenda than that favoured by the English and/or delivered by UK government.

What it did reflect much more was a demand for proximity and ownership of decision-making. UK government was—and is—seen as too remote and unresponsive outside of England. Table 3 shows how Scots have different levels of trust in the devolved Scottish government as opposed to the UK government to “work in Scotland’s interests.” Over three-quarters of Scots trust the UK Government to act in their interests “only some of the time” or “almost never.” By contrast, fifty-five percent-plus trust devolved government to act in Scotland’s interest. In Wales and Northern Ireland there are similar trust gaps. In England there is the reverse pattern: fifty-seven percent “always” or “mostly” trusted the

Table 1 Ordinary people do not get their fair share of the nation’s wealth (percentage who agree/agree strongly)

	1999	2000	2001	2002	2003	2005
Scotland	58	71	61	64	54	57
England	60	61	58	61	60	55
Wales	61	—	61	60	59	—
Northern Ireland	62	60	55	62	59	52

Source: Jeffery 2008.

UK government to work in England's interest in 2001, fifty-three percent in 2003 and fifty percent in 2007 (Curtice 2008).

These institutional trust differentials outside England do not mean that the Scots, Welsh and Northern Irish are necessarily enthused by what their devolved institutions have achieved; in many respects they feel devolution has not made that much difference in terms of policy outcomes; but, whatever the controversy or disappointment that may surround decisions made by the (Scottish) parliament, they are thought to have the crucial virtue of being decisions made at home rather than imported from England (Bromley et al. 2006, 188).

Table 2 Anglo-Scottish convergence

	1999	2000	2001	2002	2003
(1) No students or their families should pay towards the cost of their tuition fees while studying (%)					
Scotland	—	38	31	—	29
England	—	30	33	—	28
(2) Government should be mainly responsible for paying for the care needs of elderly people living in residential and nursing homes (%)					
Scotland	86	—	88	—	88
England	80	—	86	—	84

Source: Jeffery 2006, 79.

Table 3 Trust in the UK and Scottish Governments to work in Scotland's interests

	2001	2003	2005
UK Government			
Just about always	2	2	2
Most of the time	20	19	20
Only some of the time	55	58	52
Almost never	22	20	22
Scottish Government			
Just about always	13	10	10
Most of the time	52	52	45
Only some of the time	28	31	34
Almost never	4	4	8

Source: Scottish Social Attitudes Surveys.

There might appear a contradiction between, on the one hand, the existence of shared values and preferences for uniform policy standards across the UK as a whole, and, on the other and outside of England, a demand for “proximate” devolved government; the latter, logically (and all the more so given the structure of unmanaged divergence), is likely to produce diversity of policy standards. That contradiction is not unusual. It plays out in other states which have tiers of regional government and is often described as balancing uniformity and diversity. The difference is that those other places have well-established techniques of intergovernmental coordination which maintain that balance.

Underdeveloped Intergovernmental Relations

The UK has, at best, an underdeveloped approach to intergovernmental coordination. Though special mechanisms were set up to coordinate the work of UK and devolved governments—“concordats” setting out everyday rules of the game for coordination, and a Joint Ministerial Committee (JMC) for developing coordinated policy initiatives and resolving disagreements—they have been barely used. There is little strategic policy discussion at senior official or ministerial levels in which the balance of UK-wide and devolved objectives in, say, health policy or transport, is problematised. Asymmetrical devolution also encourages bilateral rather than multilateral (that is, UK-wide) discussion of policy ideas and objectives. Intergovernmental relations so far have mainly worked through informal linkages among officials with related functions in devolved and UK administrations. But these discussions are intransparent, their subject matter and impact unclear, and their content unaccountable to either UK-level or devolved democratic processes. They depend on personal working relationships, which need to be re-invented as officials move on.

In large part this understated and fragile practice of intergovernmental relations reflects the pre-history of devolution and, like the wider pattern of piecemeal devolution, the projection forward of pre-devolution practices into the post-devolution era. Before 1999 Scottish, Welsh, and Northern Irish concerns were coordinated with English/UK-level concerns in largely informal processes of discussion between departments of central government. That *intra*-governmental practice of informal territorial accommodation has been projected forward into an *inter*-governmental practice for the post-devolution era with minimal adaptation, and within the framework of collegiality that is central to the traditions of the UK civil service. But the tradition of civil service collegiality, while appropriate for the pre-devolution era of territorial *administration*, appears problematic in the new context of territorial *politics*. Already in 2003 one of the most insightful observers of the civil service, Richard Parry (2003), identified signs that once elections produced different government formations in different places, traditional

commitments to collegiality and informality would be insufficient to contain intergovernmental dispute between, say, the Scottish and UK governments. Others—including the first official inquiry into devolution, by the House of Lords Constitution Committee (House of Lords 2002)—have come to similar conclusions arguing that a more fully institutionalized approach to intergovernmental coordination would be necessary to contain future conflicts (Trench 2001, 173; Hazell 2003, 300–301; Jeffery 2006). Strikingly one of the first demands of the new nationalist government elected in Scotland in May 2007 was to convene the JMC as a regular forum for intergovernmental exchange to give the Scottish government additional grip at the UK center.

The UK as (Part-)Devolved State: What's it All For?

It is not clear, though, that institutional tinkering with the JMC or other bodies will address the problems that the UK's fragmented and incomplete approach to reforming the territorial constitution has opened up. What the devolution reforms have lacked is a conscious attempt to rethink the relationships between political community at the scale of the UK state as a whole and political community as now expressed through devolution in Scotland, or Wales, or Northern Ireland. It is clear enough why varying degrees of autonomy have been devolved to Scotland, Wales and Northern Ireland, to relegitimize the UK system of government, to give fuller voice to peripheral identities, and to provide an institutional framework for the peace process in Northern Ireland. But there has been no systematic articulation of what the UK as a whole in its post-devolution format is for, what the role of the centre should be, how it now relates to the devolved territories, how the parts now add up to make a whole. Nor, more or less by default, has there been any systematic thought about England as one of the parts that make up that whole.

Hazell and O'Leary (1999, 42, 45–46) were clear, writing at the launch of devolution in 1999, about what should have been done:

The trick will be to identify and understand what items need to be held in common throughout the kingdom as constants of UK citizenship; and what items can be allowed to vary ...

This ... is a matter on which the Government needs to give a lead, in its actions and in its words, to bind the Union together in order to counterbalance the centrifugal political forces of devolution. The Government needs to understand and allow political space to those forces, and the regional and national loyalties that underpin them; but it also needs to understand and articulate clearly a sense of the wider loyalties which bind us together at the level of the nation state.

Attempts to meet these challenges, to offer new visions of what the union is for, what the division of labor of the post-devolution UK institutions and those of the devolved nations should be, have been at best thin and half-hearted. Tony Blair rarely spoke about devolution after its introduction in 1999, and never in any depth. Only Gordon Brown, Blair's Finance Minister and then successor as Prime Minister has shown a sustained interest in devolution in a series of speeches on "Britishness." In part these have been interpreted as an opportunistic attempt to reaffirm his credentials as a Scot to be UK Prime Minister in the post-devolution state. In part they have grappled with the issue Brown himself set out, in his 1981 doctoral thesis, of how to reconcile statewide and devolved interests after devolution:

No theorist attempted in sufficient depth to reconcile the conflicting aspirations for home rule and a British socialist advance. In particular no one was able to show how capturing power in Britain, and legislating for minimum levels of welfare, for example, could be combined with a policy of devolution for Scotland. (Brown 1981, 527, cited in Mitchell 2006a, 163).

By 1999 he claimed to have the answer by emphasizing how core components of the postwar welfare state in health, education and labor market policy remained "British," in Hazell and O'Leary's terms "items held in common" despite devolution:

Today when people talk about the National Health Service whether in Scotland, Wales, or England people think of the British National Health Service ... And its most powerful driving idea is that every citizen of Britain has an equal right to treatment regardless of wealth, position or race and, indeed, can secure treatment in any part of Britain ... When we pool and share our resources and when the stronger help the weak it makes us all stronger ... I believe that the common bonds and mutual interests linking our destinies together is as real for other public services: the ideal that every child in Britain should have an equal opportunity in education. And the equally strong belief, widely felt throughout the country, that everyone in Britain who can work has the right and responsibility to do so. When Scots, English or Welsh talk of the right to work, they do not normally distinguish between the rights of the Scottish, Welsh or English miner, computer technician, nurse, or teacher (Brown, 1999).

Brown's claims about the strength of common, Britain-wide beliefs are, as was noted above in the discussion of shared values and preferences in public opinion around the UK, in large part well-founded. The problem is that the realities of educational opportunity, labor markets, and health care provision increasingly do not match the Britain-wide reach of those beliefs, but, as a marker of the

unmanaged divergence of post-devolution policy-making, instead vary significantly by national territory. In Scotland, for example, there is less selection in secondary education than in England, teachers are paid more, and health care is delivered differently. Though some of these differences pre-date devolution, they have grown significantly since and, in the post-devolution setting for territorial politics, have become increasingly politicized as attention has focused on questions of cross-border inequities and their implications for “the meaning and rights associated with citizenship in the UK” (Greer 2007).

The failure of Brown to acknowledge the contradiction between his arguments about the benefits of sharing welfare risk on a UK-wide scale and the erosion in practice of UK-wide commonalities is striking. It is indicative of a mindset in UK central government which remains curiously unchanged since and by devolution. That mindset sees devolution as a minor tweak to the UK constitution. It has been facilitated by the institutional continuities of the devolution reforms, the piecemeal approach to those reforms which have fragmented any sense of a “bigger picture” of reform across the UK, and the preponderance of England—where in fact nothing much has changed—in the business of Westminster and Whitehall. Put simply the institutions of the UK centre have not (yet had to) adapt much of what they do because of a devolution process confined to the UK periphery. The institutional expression of political community at a UK scale remains largely uncoupled from the institutional expressions of political community at the devolved scale. UK and devolved politics talk past one another.

The contrast with other regional and federal states is instructive. Over the last thirty years there have been extensive reforms to regional institutional structures in Belgium, Spain and Italy, reflecting pressures similar to those that led to devolution in the UK. There have also been protracted debates (though limited actual reforms) on the institutional configuration of federalism in Canada, Germany, Austria, and Switzerland. These debates on the formal institutional structures of the state have generally had a deeper social resonance in all these places. They have been conducted more or less transparently in formal institutions and/or set-piece negotiations involving central state and regional actors, and accompanied by wide debate in national and regional media. They have articulated tensions between competing judgements about what is right and just in the balance of meeting statewide objectives and territorial claims to distinctiveness and autonomy, in the balance of statewide and regional political community. In Germany strong decentralist pressures from the wealthy south have challenged, though not (yet) transformed the legacy of postwar commitments to statewide “uniformity of living conditions.” In Canada and Belgium centrifugal pressures based in distinctive identity (Quebec, Flanders) and declining inter-regional solidarity (Alberta, Flanders) have opened up scope for the pursuit of narrow territorial objectives,

but are still bound by enduring statewide commitments to Canadian “social union” and a Belgium-wide understanding of social security. In Italy, Austria and Switzerland themes of autonomy, identity and desolidarization have also played into debates on rebalancing the central state and the component units.

The UK has had no general, statewide forum for the discussion of constitutional reform (although there have been territory-specific forums in Northern Ireland, several in Scotland, and now also the All-Wales Convention). There has been no sustained discussion of the structures and implications of devolution in UK-wide media (although plenty of such discussion in the territory-specific media outlets in Scotland, Northern Ireland, and Wales). There has been no general articulation of the balance of statewide (and within that English) political community and the political communities that exist within the UK outside of England. As a result devolution lacks generally understood, generally accepted rules of the game which might mark out the limits of policy divergence, offer a general rather than piecemeal framework for addressing the legitimacy problems claimed by different territorial communities in the UK, conceptualize the government of England and connect it to government outside of England, manage the contradictory impulses of public opinion, and inform a framework of intergovernmental relations capable of identifying statewide objectives and balancing them against devolved autonomy.

The absence of a general debate on the rules of the game needed to make sense of and underpin the institutional reforms passed so quickly in 1997–1999 is, as the Labour MP and constitutional expert Tony Wright noted at the outset of devolution, entirely consistent with a British constitutional tradition which has focused on pragmatic adaptation and has avoided formalized constitutional debate:

On any measure (we have had) a huge constitutional change, in many respects a constitutional revolution. The only criticism I have is that we haven't spoken about it like that. And we haven't followed through some of the implications in a systematic way. That is an entirely British way of approaching these things. You make revolutions and hope nobody notices (Morrison 2001, 505).

Outlook

It is precisely the continuation of that constitutional tradition that marks the devolution process as incomplete and unstable. The post-devolution constitution remains hobbled by the path dependencies of pre-devolution administrative arrangements and is in all likelihood ill-equipped to express and contain the new dynamics of territorial politics that devolution has begun to set in motion. That those dynamics have been contained so far is a result of a transitional party-political congruence: the fact that Labour led the governments in Westminster and

in Edinburgh and Cardiff from the launch of devolution in 1999 through to 2007. Where there were overt differences of interest and priority between UK and devolved governments—arising from the impact of cross-party cooperation and/or the competitive pull of nationalism in Scotland and Wales, or unintended or deliberate spillovers from Anglo-UK—they could be finessed within the Labour Party family.

The 2007 round of devolved elections took these territorial dynamics out of Labour “family” politics. One effect may have been to open up greater clarity on the direction of further change to the UK’s territorial constitution. Though there is still no UK-wide forum for the discussion of constitution reform, there are at least now parallel and simultaneous official forums under way in Scotland (split between rival nationalist and unionist variants) and Wales, along with a more informal, but still significant attempt in and around the Conservative Party to think through England’s constitutional future. A view across these forums may offer a sense of perspective on the current, second constitutional moment of UK devolution.

Strikingly, only one of the current set of constitutional forums has the assignment to think about the conditions for stronger union as well as further-reaching territorial autonomy: the unionist Commission on Scottish Devolution, which is charged, *inter alia*, with continuing “to secure the position of Scotland within the United Kingdom.”⁶ How it might do this is still unclear, though it appears to be considering whether to recommend formal mechanisms of fiscal equalization as an expression of UK-wide solidarity and risk-sharing, alongside some kind of (probably declaratory, rather than statutory) endorsement of a statewide social citizenship that would express pan-UK commitments to providing social security through income replacement schemes, free pre-university education, and free health care.

But even then, the Commission is concerned only with the bilateral union of Scotland with the rest of the UK, and deals with the other unions that also encompass Wales and Northern Ireland by implication only. And alongside its recommendations on the union, it is also likely to recommend some form of greater fiscal autonomy and additional legislative powers for the Scottish Parliament. In that respect it has common ground with the SNP’s National Conversation. Significantly the fullest section in the SNP government’s White Paper that launched the National Conversation was on “extending Scottish devolution” (Scottish Executive 2007, 7–17). One reading of this is that the SNP sees independence as a longer-term project, and that any steps in the direction of fuller autonomy in the short term are valuable. Another is that the SNP has recognized that there may ultimately be little practical distinction between maximal devolution within the UK and notional independence outside the UK given the continued interdependencies and institutions Scotland would still share with the rest of the UK, and given a common setting in the European Union.

The question is whether the commitment to more devolution, which provides a common denominator between the SNP and the unionist parties in Scotland, has much prospect of being counterbalanced by steps to underpin the union. The continued—and, as this article has repeatedly stressed, traditional—territorial fragmentation of political debate about the relationship of the different parts of the UK to the union as a whole suggests that a territorially encompassing view on the renewal of the union is unlikely to emerge. The National Conversation and the Commission on Scottish Devolution are about Scotland; neither the All-Wales Convention nor the Independent Commission on Funding and Finance for Wales are required to think about the union as part of their assigned tasks; and the Conservative Party's Democracy Task Force has produced ideas only on the territorial government of England. Even more strikingly, though one of the first acts of Gordon Brown's prime ministership was to publish a Green Paper on *The Governance of Britain* (UK Government 2007), and though the Green Paper has since spawned a large number of initiatives,⁷ in none of them has there been any formal recognition by the UK government that the arrangements for governing the post-devolution union are a challenge for and priority of the "governance of Britain."

The continuing failure of the union's government to become in any explicit sense an advocate for union in the face of obvious centrifugal pressures is, by any measure, remarkable. Labour, since 1997, has in effect taken the union for granted in a mix of metropolitan myopia and an over-confidence in the capacity of the Labour Party (the only party with significant and relatively even strength in England, Scotland and Wales) to bring adhesion to the union. There are two lessons. The first is a general one. Territorial constitutional reform, especially if focused on some parts, and not the whole, of the state concerned, needs to combine measures that renew the purposes of the whole as well as those that address the particular needs of the parts. If there is no clear view on the whole of the state there is a risk that reform to the parts both prompts centrifugal tendencies ("we want more powers") and opens up territorial cleavages ("what the others have is unfair to us"). The UK is now experiencing both of these risks.

The second lesson is a specific one and casts doubt on whether the UK can contain those risks. If the Labour Party has been, if only by default, the adhesion of the union over the last decade, Labour is now losing its grip. Some of that grip was lost following the devolved elections in 2007. More may well go at the next UK election which will be held by mid-2010. Few are tipping Labour to win; most expect a Conservative government under David Cameron, though few expect Cameron to be buoyed by significant strength in Scotland. Success in England will be the key to Conservative recovery. By 2010 the prospect is one of an England-focused Conservative UK government ranged alongside a nationalist Scottish government, each with divergent appeals to particular territorial political

communities. The most likely outcome in this scenario would be the further fragmentation of political community in the UK. In other words: as we move away from pan-British Labour hegemony the integrity of a post-devolution constitution in which institutional reform has not been accompanied by a more general rethinking of the purposes and balances of different scales of political community looks set to be sorely tested.

Notes

Parts of this article draw from the inaugural lecture I presented as Professor of German Politics at the University of Birmingham on November 6, 2001 entitled “Processes, not Events. Constitutional Change in Germany and the UK”.

1. <http://www.scotland.gov.uk/Topics/a-national-conversation>.
2. <http://www.commissiononscottishdevolution.org.uk/>.
3. <http://new.wales.gov.uk/awcsub/awchome/?lang=en>.
4. <http://new.wales.gov.uk/icffw/home/?lang=en>.
5. For a periodic account of Scottish-UK disagreements see the sections on Inter-governmental Relations in the quarterly *Scotland Devolution Monitoring Reports* at <http://www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html>.
6. <http://www.commissiononscottishdevolution.org.uk/about/index.php>.
7. <http://governance.justice.gov.uk/>.

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