

Political Devolution: An experience of the United Kingdom

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Abstract:

The United Kingdom has undergone a profound transformation in its governance structure over the past few decades, marked by the process of political devolution. This paper aims to provide a comprehensive analysis of the UK's experience with devolution, shedding light on the motivations behind this constitutional shift and its implications for the constituent nations. This paper also aims to examine the intricate landscape of political devolution in the United Kingdom, from historical context, and the evolving dynamics of power distribution among its constituent nations with a focus on Scotland, Wales, and Northern Ireland. Finally, this paper seeks to unravel the multifaceted tapestry of devolution, exploring the challenges, successes, and the ongoing discourse surrounding this constitutional experiment.

Introduction:

Devolution allows the devolved governments to develop the policies that are tailored to the need of their areas encouraging policy divergence though there is a pressure to ensure that devolved approaches do not contradict those of central state.¹ Devolution in the United Kingdom refers to the process of decentralizing political power from the central government in Westminster to regional and national administrations. The UK, historically characterized by a highly centralized governance structure, embarked on a journey of devolution to address regional disparities, promote local autonomy, and accommodate cultural diversity. Therefore, The UK model of devolution is based upon a separation of powers between the UK parliament and the devolved parliaments.² The key components of devolution in the UK include the establishment of devolved parliaments/assemblies and transfer of some legislative powers to these sub-national entities where the matter is completely related to the devolved territory.

¹ Danny Mackinnon, Devolution, State restructuring and policy divergence in the UK, *The Geographical Journal*, RGS 2013

² *ibid*

Federalism, Devolution or Devolved Federalism.

The big question whether the United Kingdom is a group of devolved states or is a truly federal Kingdom is very hard to answer. Whilst the traditional constitutional lawyers always argued that federalism is fundamentally different from devolution,³ it is quite hard to differentiate between the federalism and the concept of devolution in modern days as the distinctions are being less and less clear due to the evolution in the political theories.⁴ However, some conceptual differences can be teased-out from a jurisprudential perspective.⁵ Federalism in conceptual sense involves the division of powers between a central and regional or local government, whilst on the other hand, devolution refers to the delegation of powers from central government to a sub-national entities i.e. regions or local government. Whilst the federalism is characterised by the clear constitutional division of power, devolution very often allows the central government to grant certain powers to regional or local government retaining the authority to take back when needed. However, politically it is going to be extremely hard, if not impossible, to take back whatever is already given. Here the majority decision by Supreme Court of Canada in the case of Attorney General of Manitoba et al Vs. Attorney General of Canada (1981) is very pertinent where the court ruled that “as a matter of law, the federal government could request the patriation of the Constitution and thereby alter the powers of the provinces, despite the opposition of a majority of provinces”. The judges also reiterated that federal parliament acting on the matter of federal relationship without the consent of the provinces would violate the constitutional convention as it requires the substantial degree of provincial consent for such an act. On the other hand, the devolution conceptually allows the central state to take back any power and Act without such a substantial degree of consent although it may be politically hard to do so in practice. Thus, federalism and devolution can be differentiated on the basis of right of the central or federal state to make a decision with or without the consent of the provinces as the concept of devolution ideologically do not necessarily require the consent of the provinces in making those decisions. However, this ideological distinction is fading away, particularly in the context of postmodern concept of right to self-determination, recognition of communities etc. Whether we call it federalism or we call it devolution, the question is the freedom of local community to determine policy that matters them most. Therefore, this paper will not deal with the conceptual question of federalism or devolution for the purpose of explaining the UK experience having 4 separate

³ Michael Keating and Guy Laforest, *Federalism and Devolution: The UK and Canada*, in Michael Keating and Guy Laforest (eds), *Constitutional Politics and the Territorial Question in Canada and the United Kingdom* Federalism and Devolution Compared (2018), Palgrave MacMillian.

⁴ A. G Gagnon (Ed.). (2009). *Contemporary Canadian federalism: Foundations, traditions, institutions*. Toronto: University of Toronto Press.

⁵ *ibid*

states in one Union whereas some analysis of the historical context of the devolution in the United Kingdom constitutional development can be useful in setting the scene.

Historical Context:

The history of devolution in the United Kingdom is a complex and evolving narrative that reflects the changing political landscape and the diverse aspirations of its constituent nations. The chronological incidence as discussed following will be able demonstrate how the devolution is evolved in the United Kingdom political landscape.

In the 1970s, there was a growing recognition of the need for constitutional reform and decentralization of power. The Kilbrandon Report 1973 laid the groundwork for the idea of devolution, recommending the establishment of a Scottish Assembly with legislative powers. The Labour government, led by James Callaghan, proposed devolution for Scotland and Wales. A referendum was held in Scotland in 1979, but the proposal did not secure the required level of support, leading to its abandonment. Despite the failure in 1979, the idea of devolution persisted. Margaret Thatcher's Conservative government in the 1980s faced renewed demands for Scottish and Welsh autonomy. Then the Calman Commission (1989-1990) in Scotland explored constitutional issues and proposed further devolution. In the meantime, the Scottish Constitutional Convention (1989-1995) brought together various political and civic groups to discuss and draft proposals for devolution.

The Labour Party, led by Tony Blair, included devolution in its manifesto for the 1997 general election. Referendums were held in Scotland and Wales in 1997, resulting in significant majorities in favour of devolution. This initiative led to the famous Scotland Act and Government of Wales Act 1998 enacted, establishing the Scottish Parliament and the National Assembly for Wales, respectively. These Acts granted legislative powers to the devolved institutions in areas such as education, health, and transportation, which also paved the way for popularly known "Good Friday Agreement" for Northern Ireland.

Good Friday Agreement.

After nearly 30 years of violence with 37,000 confirmed death and over 1,00,000 injuries, the Good Friday Agreement (Belfast Agreement) was reached in 1998, providing for devolved government in Northern Ireland. The agreement consisted of 3 elements, the first-establishment of the power sharing institution through enactment of The Northern Ireland Act 1998 creating the Northern Ireland Assembly, with a power-sharing arrangement. The second

– institutional link between the Northern Ireland, Republic of Ireland establishing institution such as North-South Ministerial Council and the third – inaugurating the link between the Britain and the Irish establishing the British-Irish Council and British Irish Intergovernmental conference.⁶ “Grand Coalition” which can be explained as following is the main characteristics of the good Friday agreement.⁷

- First Minister chosen by party with most seat.
- Deputy First Minister chosen by the largest party from the other community (this would be the Unionists if the Nationalists had appointed the First Minister and vice versa),
- First Minister and the Deputy First Minister have equal executive powers.
- Further Executive Committee (like a Cabinet) made up of both Unionist and Nationalist Ministers.

This arrangement itself is very complex and able to bring stalemate in the political system even though such arrangement was made in order to address deep-seated grievances, building trust between communities, and fostering a sense of shared identity.⁸ For the same reason, the functioning of this arrangement has faced numerous challenges including periods of suspension. The never-ending community relationship, external and internal factors such as the relationship with the republic of Ireland and the United Kingdom, and roles played by internal and external media has been considered to be an influential factor against the success of the good Friday arrangement.⁹

The setbacks on the Good Friday Agreement teaches us about the complexities of conflict resolution and the importance of addressing deep-rooted issues. It highlights the need for sustained commitment from all parties involved and underscores the challenges of reconciling historical grievances and diverse perspectives. It's a reminder that peace processes require ongoing attention, flexibility, and a genuine understanding of the concerns and aspirations of all stakeholders. Additionally, it also emphasizes the significance of international support and the role of external actors in facilitating and sustaining peace efforts.

⁶ John Nagle, *Between Conflict and Peace: An Analysis of the Complex Consequences of the Good Friday Agreement* *Parliamentary Affairs*(2018)71,395–416

⁷ Sean Dunlon, *The Rocky Road to Good Friday Agreement*, in Mary E Daly (ed), *Brokering the Good Friday Agreement: The Untold Story*. *Royal Irish Academy*, 2019..

⁸ Tim O'Connor, *North-South Cooperation and Good Friday Agreement: a Story of God Architecture*, in Mary E. Daly(ed). *Brokering the Good Friday Agreement: The Untold Story*. *Royal Irish Academy*, 2019.

⁹ Paddy Hoey, *Shinners, Dissos and Dissenters: Irish republican media activism since the Good Friday Agreement*, Project Muse, Baltimore Maryland, 2019

Devolution in Scotland:

The milestone of Scottish devolution is marked by the Scottish Parliament, which was established in 1999 by the Scotland Act 1998. Within the devolved system, the Scottish Parliament has the power to make decisions on various policy areas, including education, health, justice, and transportation, while certain reserved powers remain under the control of the UK Parliament in Westminster. The area reserved for Westminster are: constitutional matters, International Relations, Immigration, Drug Policy, Political Party and Election etc. Even in the area where the Scottish Parliament have rights to legislate, the power is shared in various aspects of that such as transportation, broadcasting, tax, regulation of specific industry etc. The devolved institutions gained additional powers through subsequent acts, such as the Scotland Act 2012. The Smith Commission (2014) proposed further devolution to Scotland following the independence referendum. The Scotland Act 2016 implemented many of the recommendations, enhancing the Scottish Parliament's powers including new taxation powers. Additionally, the ongoing discussions and negotiations between the Holyrood and Westminster may lead to further adjustments in the distribution of powers. This relationship unravels the intricacies of devolution in Scotland.¹⁰

Despite the Scotland Act 2016 has equipped the Scotland with more devolved power the movement for independence is still a key issue within the context of relationship between Westminster and Scotland. The Scottish National Party (SNP) has been a major proponent of independence, and there have been debates and discussions about holding another referendum on Scottish independence whilst 2014 referendum voted for remain within the United Kingdom. Another twist on the UK Scottish relationship comes when the Scotland voted for remaining in the European Union whilst the majority of the UK voted to leave the European union during the Brexit referendum in 2016. This has led to significant tension and disagreement in relation to the Scottish Devolution.

Here it is interesting to see the approach of the court in case of devolution. The Supreme Court was confronted in United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill [2021] UKSC 42, [2021] 1 W.L.R. 5106 with some fundamental constitutional questions. It answered them in somehow surprising ways, casting unexpected light on key constitutional legislation and on the doctrine of parliamentary sovereignty. It was argued before the court that the Scottish Parliament had exceeded its legislative authority when it sought to give effect in Scottish law to two treaties that had not been incorporated in UK law.

¹⁰ Fiona Simpkins, Twenty Years of Devolution in Scotland: the End of a British Party System?, CRECIB - *Centre de recherche et d'études en civilisation britannique Revue française de civilisation britannique*, 2019, Vol.XXIV (4)

Perhaps the Court's least surprising conclusion was that section 20, authorising "strike-down declarators" in respect of legislation enacted prior to the Scotland Act entry into force, was outside devolved competence. Where the Scottish Parliament can repeal Westminster legislation under the Scotland Act insofar as it applies to Scotland and relates to matters within devolved competence, why could Holyrood not authorise courts, within corresponding parameters, to strike down UK legislation? was an interesting question that the court dealt with. While answering this question, the Supreme Court reiterated that Westminster has itself directly authorised the Scottish Parliament to repeal UK legislation but has not similarly authorised the Scottish courts to strike down such legislation.

The Supreme Court's judgment in this case embodies a milestone both for devolution and for the constitution more widely. On devolution, the Court confirms that section 28(7) of the Scotland Act, far from merely reaffirming parliamentary sovereignty, represents a broad, powerful restriction on devolved legislative freedom. Furthermore, the judgment approves that provisions of the Scotland Act - particularly section 101 - which are intended to secure a degree of devolved legislative flexibility are not capable of evading limitations that are explicitly part of the devolution settlement (such as the pre-enactment safeguards), or limitations (such as those that derive from the rule of law) that form an implicit part of that settlement. As a result, the hierarchical distance between the Scottish Parliament and Westminster appears to be far greater than had previously been thought. Second, it views parliamentary sovereignty as a concept sufficiently flexible as to be capable of tolerating such compromise. The HRA is widely understood to have been designed to preserve a more rigid, less forgiving conception of sovereignty. The Supreme Court, at least implicitly, suggests that such an attempt was neither successful nor necessary.

The court took similar approach in the case of Dorothy Bain KC et al (appellant) and Sir James Eadie KC et al (respondent) where the Supreme Court was to decide whether the Scottish Parliament have competency to legislate in order to hold a referendum for Scottish independence, where the Court came to the conclusion that the matter being relevant to the overall Union is reserved matter for the Westminster and Scottish parliament lacks the legislative capacity in this matter. Very interesting the Right of Self determination in international law was critically analysed and not surprisingly the Supreme Court agreed with following declared in case of the relationship between Canada and Quebec:

“In summary, the international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic,

social and cultural development. In all three situations, the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination.”

Thus, the Court’s approach to the devolution is more limiting and orthodox in the sense that it still interpreted the right of the Scottish Court to strike out the bill on the basis of the contractual jurisprudence and the people’s right of self-determination in a very narrow reading of the colonial relationship. This also means that there is a growing tension between the central and the devolved administration, which is a biggest challenge, which will be more apparent in future after how the Brexit is viewed by the Scottish people.

Devolution in Wales:

Wales, too, has experienced a unique devolution journey marked by the establishment of the Senedd (Welsh Parliament) with legislative powers devolved to Wales. Although not as prominent as the Scotland, Wales also faces the independence movement as some parties and groups have been advocating the greater autonomy or independence.

Currently, devolution allows the Wales government to have control over certain social and economic policies, such as health, education, and local government. Issues may arise in coordinating policies with those of the UK government and addressing disparities in economic development. The UK government's proposals for constitutional and legislative changes, such as the Internal Market Act, have raised concerns in Wales.¹¹ These changes can affect the powers of the devolved administrations and their ability to make independent decisions in certain policy areas.¹²

Challenges:

Having an unwritten constitution, the United Kingdom constitutional framework is intricate and leads to various complexities particularly in terms of distribution of power between central and devolved legislative and government.¹³ The devolved administrations have their own sets of powers, but the boundaries between reserved and devolved matters are quite blurry. Fiscal autonomy is mainly blamed for funding disparities, despite having a separate central ministry

¹¹ Kevin Morgan and Richard Jones, Brexit and Death of Devolution, *The Political quarterly* (London. 1930), 2023

¹² Peter Foster, *Hard Brexit puts pressure on borders — not just in NI but in Wales and Scotland too*, London: The Financial Times Limited , 2021.

¹³ Ian C. Elliott ; Karin A. Bottom ; Paul Carmichael; Joyce Liddle ; Steve Martin; Robert Pyper, The fragmentation of public administration: Differentiated and decentred governance in the (dis)United Kingdom, *Public administration* (London), 2022, Vol.100 (1), p.98-115

for levelling up, the disparity is still very apparent between north and south even within England. Due to different ideological views of the political parties in devolved administration, the independence movement is still important part of the very awkward relationship, and this is not seen be fading away in foreseeable future. The UK government's proposals for constitutional reforms, including in the issue of the Internal Market Act, have raised concerns.¹⁴ Changes in some of the legislation and the centralization of certain powers have been sources of controversy, with devolved administrations expressing reservations about the impact on their autonomy. There is a huge disagreement over the Sewel Convention, which outlines the circumstances under which the UK Parliament may legislate on devolved matters, have been notable challenges within the context of the political devolution in the United Kingdom.

Lessons for future:

The UK's approach to political devolution is very complex one due to its own specific situation, particularly within the context of historical evolution of the state structure. Any devolution when it is concerned with the conservative structure of state is a compromise and always comes with problems and issues at almost every stages. The United Kingdom experience is exactly like that. However, it offers several lessons that can be valuable for other countries considering or undergoing a similar process:

1. Flexibility in Design:

The UK's approach allows for flexibility in the design of devolution arrangements. The devolved administrations in Scotland, Wales, and Northern Ireland have varying degrees of powers, reflecting the specific needs and desires of each region accommodating different historical, cultural, and political contexts.

2. Consensus Building:

The process of devolution in the UK has undergone significant consensus-building efforts. In the case of Scotland and Wales, referendums were held to gauge public support for devolved administrations. Such public decision-making processes fosters legitimacy and helps build a broader consensus for the devolutionary structure.

3. Adaptability:

The UK has shown an ability to adapt its devolution arrangements over time by expanding and limiting the powers of devolved administration through subsequent legislation, which allows for addressing emerging issues and responding to the evolving needs of the devolved regions.

¹⁴ Angus Armstrong, *Effective Devolution*, National Institute economic review, 2019, Vol.250 (1), p.R83-R88

4. *Distribution of Powers:*

Whilst there have been challenges in defining the boundaries between reserved and devolved powers, the attempt to clearly outline these distinctions is a crucial lesson. A well-defined distribution of powers helps prevent disputes and provides a framework for cooperative governance.

5. *Consideration of Regional Identities:*

Acknowledging and respecting regional identities has been an important aspect of the UK's approach to devolution. The recognition of the distinct identities of Scotland, Wales, and Northern Ireland has contributed to the success of devolved governance.

6. *Balancing:*

Treading a fine balance between centralization and devolution is key to success of any devolution. This an ongoing challenge in the case of UK. Lessons can be drawn from the UK's experience in steering this delicate balance, ensuring that certain powers remain reserved for the central government while allowing autonomy for devolved administrations in areas relevant to regional needs.

7. *Communication and Coordination:*

Effective communication and coordination between the central government and devolved administrations are crucial. Clear lines of communication help in crisis management and ensure a unified response to challenges.

8. *Democratic Accountability:*

Democratic accountability is the key to any democratically governed system. From the various incidence discussed above such as referendum and different commission, it is well demonstrated that the UK approach of devolution relies on democratic accountability of central and devolved parliaments and assemblies, who are directly elected by the people.

9. *Continuous Review and Evaluation:*

Any devolution arrangement needs regular review and evaluation in order to allow for adjustments and improvements. The willingness to revisit and refine devolution structures based on experience and changing circumstances is a valuable lesson.

It's imperative to note that the effectiveness of any devolution model depends on the specific context and circumstances of each country. The lessons from the UK's approach can serve as a foundation for discussions and considerations.

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