

Policy Convergence and Divergence in Scotland under Devolution

Michael Keating
European University Institute, Florence
University of Aberdeen

European University Institute
Badia Fiesolana
50016 S. Domenico di Fiesole
Italy
+39 055 4685 250
keating@iue.it

Forthcoming in *Regional Studies*

Revised version, 5 August 2004

Policy Convergence and Divergence

The aim of this paper is to assess the potential for, and degree of, policy convergence and divergence in Scotland after devolution. Divergence is measured by reference to two comparators: Scottish policy before devolution; and contemporary policy pursued in England. Of course, public policy is a notoriously slippery concept, and a difficult one to operationalize and measure. It is the product of numerous influences at various spatial and functional levels. Policy as designed at one level may change in the process of implementation at other levels. The focus here is the Scottish level and the extent to which the new institutions at that level have made distinct policy choices.

Implementation is an important question, but not part of this research. The study of policy impact must also wait until it is possible to assess the effects of changes since 1999.

Policy might diverge at a number of levels and in more or less fundamental ways. The most radical would result from the identification of different issues, producing a distinct policy agenda in Scotland. Less radically, the same issues might be identified but defined and framed differently. Then issues might be defined the same way, but different policies adopted. Least radically, the same policies might be adopted, but delivered using different instruments, which might give scope for differential implementation or to benefit slightly different client groups. In practice, differences between policies shade into differences in degree within policies. The argument here is that devolution has meant a shift within this continuum from the latter to the former and thus an enlargement of the scope of policy making in Scotland.

The article first looks at the setting for policy making in Scotland, including the historical legacy, the context of the modern welfare state, and the division of responsibilities between Scottish, UK and European levels. It then examines the political factors, including policy communities, public opinion and political parties and the extent to which they are creating a distinct policy demand. Next we look at the capacity of the Scottish Executive to make its own policy. The final section looks at policy divergence in practice, as evidenced by the first five years of the new devolved institutions.

The Historical Legacy

Contemporary studies of public policy are most often cast in a 'new institutionalist' frame. This recognizes the importance of institutions in framing behaviour and policy choices and could lead us to expect that constitutional change should have policy consequences. On the other hand, new institutionalism also emphasizes continuities, path dependency and the role both of old formal institutions and of ingrained practices (HALL and TAYLOR, 1996; STEINMO, THELEN and LONGSTRETH, 1992). Devolution and regional government in the other important European cases, Spain, Italy and Belgium, represented the insertion of a new territorial level into a previously centralized, functionally organized systems of government.¹ While this represented a significant political change, the weight of centralized institutions, personnel and practices has constrained the policy making of devolved governments (SUBIRATS and GALLEGO, 2002; DE RYNCK, 2002; BALME ET AL, 1994; ISSIRFA, 2003; NEGRIER AND JOUVE, 1998).

¹ I do not include France, which has only executive and not legislative devolution, or Germany, which has been federal since the foundation of the state. Devolution is the transformation of a unitary state.

Scotland, by contrast, started from a tradition of administrative decentralization, in which large areas of domestic policy making were the responsibility of the Scottish Office and its associated agencies. There are contrasting judgements on the significance of this. KELLAS (1984) wrote of a Scottish political system, able to take authoritative decisions. PATERSON (1994) argued that, at least until the 1980s, Scotland had enjoyed a large degree of autonomy, through its administrative agencies and distinct civil society. MOORE and BOOTH (1989) asserted that there was a form of meso-corporatism in Scotland, in which government and interest groups produced a 'negotiated order'. Other observers, however, emphasized the centralist nature of the British state, arguing that the Scottish Office was there to put a Scottish face on British policy. If there was divergence, it concerned the instruments rather than the ends of policy, how things were done rather than what was done (ROSS, 1981; KEATING and MIDWINTER, 1982; MIDWINTER, KEATING and MITCHELL, 1991; KEATING, 2001). Significant changes from the British policy line required clearance from Cabinet and, if there were any financial implications, from the Treasury (KEATING and CARTER, 1987). Administrative devolution, the presence of Scottish ministers in London and the limited parliamentary time for Scottish affairs did, however, mean that Scottish policy making was more insulated from local political pressures than was the case in England. Those Scottish groups that had carved out a niche within the system of administrative devolution enjoyed an insider status, but others found it difficult to penetrate. Governments had little fear of being defeated on Scottish issues, since this would require a rebellion of English backbenchers. As a result, central government policy could be imposed more easily than in England even on sensitive matters like local government reform. All the major initiatives of the 1979-97 Conservative governments were applied in Scotland; the poll tax was even pioneered there and only abandoned after massive protests in London.²

If this analysis is correct, then devolution thus represents a twofold shift in influence. Power is transferred from London to Edinburgh; and within Scotland from the old policy networks to a broader and more pluralist policy community. The formal arrangements for devolution open up the prospect of such a shift. Scottish powers are defined broadly, excluding only those explicitly reserved for Westminster, allowing the Scottish Parliament and Executive broad scope in deciding both what to do and how to do it. Legislative devolution is paralleled by administrative division, based on the old Scottish Office, so that there are, in most policy fields, no overarching British or UK departments and Whitehall ministers cannot interfere in devolved matters. On the other hand, we know from experience of federal and devolved systems of government that formal autonomy does not necessarily lead to real power to make distinct policy. We need to take into account a range of contextual, political and institutional factors.

Context

Devolution has taken place within a complex, modern welfare state embedded in the European Union and a global free trading order, which imposes considerable constraints on policy differentiation. Firstly, the UK single market limits actions that might hinder the free movement of goods, services and labour, or constrain market competition. This is

² The reverse appears to be true now, as Scottish MPs are used to push through English legislation, overcoming internal dissent in the Labour Party in England.

reflected in the provisions for devolved industrial policy, which prevent Scotland engaging in unfair subsidization; provisions under European law have the same effect. Secondly, the welfare state settlement is based on notions of universal entitlement irrespective of place of residence. This is a political principle derived from a notion of 'social citizenship' which is still seen as essentially British. It is also a practical matter of controlling 'welfare migration' in which individuals move in search of better services, penalizing jurisdictions that offer more generous terms. Generally speaking, the Scottish Parliament has control over services in kind delivered territorially, rather than cash transfers delivered to persons, but already issues have arisen as to entitlement to various benefits. Should such differentiation increase, we may see the development of a form of Scottish social citizenship defined by entitlements, overlaying British citizenship, but it is not clear that the British political parties are ready for this. Thirdly, there is a common security area, limiting the extent to which law and order and policing matters can in practice diverge within Great Britain (although they do in Northern Ireland). These factors would suggest that differences in policy are likely to be matters of degree and scope, rather than radically different conceptions of the main policy fields of economic management, welfare and security. In fact some of these factors now extend beyond the state, to the European level, and apply to the UK government as well as the Scottish Parliament, if not in such a constraining way.

On the other hand, the modern state also shows tendencies to differentiation and complexity. Macro-economic management may be a matter for the state, Europe and global trading regimes, but economic development and adaptation is increasingly seen as a local and regional matter. Regional and devolved governments are under intense pressure to adapt to the conditions of European and global competition, but they are not powerless in shaping their response (KEATING, LOUGHLIN AND DESCHOUWER, 2003). Development strategies are differentiated according to the social and political structure of particular places, and there is a wide consensus they require refined and sensitive policies best managed by decentralized agencies. Similarly, the broad principles of the welfare state may be consistent across the state, but policies for social inclusion are now seen as best handled in the local context, where particular conditions can be taken into account and policy instruments mixed and co-ordinated. Policies on law and order can similarly be localized in new ways of addressing questions of delinquency or treatment of offenders, even while the broad coverage of law is the same. Experience with other federal and devolved systems suggests that, within shared assumptions about the role of the state in social and economic policy, there is room for experimentation and innovation. All this suggests that policy divergence might be a matter of degree rather than nature, but that its scope should be greater under devolution.

Shared Responsibilities and Intergovernmental Policy Making

Like other devolutionary and federal schemes, the Scotland Act produces three types of competence: reserved, devolved and shared.³ Powers devolved to Scotland are very extensive compared with most devolved or even federal systems, with the notable absence of fiscal autonomy. In mature federal systems such as Germany or devolved systems like Italy and Spain, the shared category is quite large and is managed by

³ This is the effect although, technically, only the reserved powers are specified.

negotiation between devolved or federated, and central or federal departments. Often the central level will pass framework laws within which the devolved units must operate. UK devolution has relatively few shared powers and there is an absence of framework laws, with some exceptions like economic development, where the Scottish Executive operates within broad parameters set by Westminster and Brussels. This is more like the Belgian system, which tries to avoid shared competences (BRASSINE, 1994).

On the other hand, there is a large degree of interdependency between devolved and reserved powers. Transport policy is divided in a complicated way. Initially, railways and air transport were reserved while road transport was devolved. Later the Scottish Executive gained responsibility for franchises and subsidies for rail services contained within Scotland, enabling it to plan rail and road policy together but raising problems about the relationship between rail services (devolved) and rail regulation and the network (reserved). Inevitably, the Scottish Executive has taken an interest in air transport and airports, although only the airports in the Highlands and Islands (regarded as an essential social service) are devolved. There is a resulting tendency, which has also been noted in other systems, for central agencies to pass down costs to the devolved government, so that the Scottish Executive is carrying a substantial burden for improving the rail infrastructure.

Welfare state matters are divided between the Scottish and UK levels, with Scotland largely responsible for social services and London for cash payments, but the interface between the two creates areas of shared responsibility. Further interdependencies are created by new, transversal policy initiatives, responses to new problems or new ways of framing social questions. So, as labour market policy has been linked to welfare policy and to social services in the effort to get people into work, both levels of government have had to work together. This is visible in the New Deal initiative, which cuts across devolved and reserved functions. The broader social inclusion agenda, the focus on rural affairs, or the theme of 'environmental justice' are other transversal policy issues, requiring a co-ordinated approach not only across Scottish Executive departments but among the various levels of government, European, UK, Scottish and local, as well as the voluntary and private sectors. There is also a general concern, reflected in the devolution White Papers and legislation, that devolved governments should not upset UK policies in reserved areas and should adhere to European regulations.

This imposes a large degree of intergovernmental policy making. While this is common to multilevel systems of government, the UK again stands out in its degree of asymmetry, and in the fact that the UK government doubles up as the domestic government of England. Whitehall departments are sometimes predominantly English, where their responsibilities correspond to devolved powers in Scotland, Wales and Northern Ireland, for example the Department for Education and Skills or the Department of Health; although in legislative matters, these are English and Welsh. In other cases, they are predominantly UK departments, like the Foreign Office, Department of Work and Pensions or Department of Defence. A third category is mixed, with some functions applying only in England, others in England and Wales, others to Great Britain and yet others to the United Kingdom; a prime example is the Home Office. The result can be seen from two perspectives. We could say that, in policy fields like education or agriculture, there is no 'central government', merely a group of territorial departments for England, Scotland, Wales and Northern Ireland, co-ordinating where necessary on

common issues. Alternatively, we could argue that there is a centre and that it is England, whose government and departments dominate and lead the policy process, to which the other administrations must adapt. There is in fact some truth in both perspectives.⁴ The result is a certain policy drag, as the devolved administrations are pulled along by initiatives from England.

Intergovernmental policy making is further complicated by the European Union, many of whose responsibilities correspond to devolved matters in Scotland. This imposes a two-fold loss of power, as Brussels regulates for devolved matters, and as the UK government re-enters devolved fields to present a single negotiating position in the Council of Ministers. Again, this is found in other federal and devolved systems, where the response has been to secure guarantees for the lower tier, both 'upstream' in the making of EU policy, and 'downstream' in its application. German and Austrian Länder and Belgian regions and communities have guaranteed rights of participation and even to lead their national delegations to the Council of Ministers. In the Convention on the Future of Europe, the regions gained a subsidiarity clause intended to protect their competences from undue European intrusion. Scotland has relied on a non-statutory Concordat and on political relations between the Scottish Executive and the Westminster government (BULMER ET AL., 2002). In fact, the position has been carried over largely unchanged from the days of the Scottish Office and the Scottish line so far has been to cleave closely to the UK position, remaining an insider to the UK networks and depending on the weight of the United Kingdom to protect Scottish interests. Some divergences, however, have emerged between the UK and the Scottish position on fisheries and reform of the Common Agricultural Policy. Scotland has been active in the movement of the European 'legislative regions', although they gained little out of the Convention on the Future of Europe. There are unresolved issues over how far Scotland would be able to apply the scope for variation in implementation of EU regulations that is given to 'national' governments in order to create variation within the United Kingdom. There is some interest in exploring the idea of tripartite partnerships which the Commission is pioneering to give regions greater leeway in adapting European policies.

Intergovernmental policy-making in the United Kingdom is not highly institutionalized. There are Concordats to govern the relations between Scottish and Whitehall departments, and a series of Joint Ministerial Committees, but these are little used in practice (HOUSE OF LORDS, 2002). There is, instead, a reliance on informal mechanisms at civil service and ministerial levels, and on party political contacts. This resembles the arrangements in Spain or Belgium more than those in Germany or Canada. Given the highly partisan nature of British politics, these informal practices could hardly survive the presence on different parties in power in London and Edinburgh, and we would then need a different set of mechanisms.

Policy Communities

Scotland has always had its own interest groups, some of which emerged separately by historical accident, others in response to administrative devolution and need for interlocutors with the Scottish Office. In other cases, there are Scottish branches of UK or

⁴ Further confusion is added when Scottish MPs are appointed to UK departments dealing predominantly with England, as in the case of John Reid, made Secretary of State for Health in 2003, on the grounds that any MP can serve in any 'UK department'.

British groups. Devolution has led to a strengthening of this Scottish level, and a general grant of formal autonomy corresponding to the division of competences within government. More officials have been appointed to engage in policy work and parliamentary liaison.⁵ There has been a corresponding reduction in contact between Scottish groups and Whitehall, as they have used the Scottish Executive as the main point of access, even some times on reserved matters; the Scotland Office, now absorbed in the Department of Constitutional Affairs, is little used. Less expected, perhaps, is the relative lack of direct contact with Europe, which some groups before devolution had seen as an alternative outlet for their lobbying. Now there is a tendency to leave this to their UK counterparts, and work through them. Beyond these generalizations, we can detect some patterns in interest articulation and lobbying strategies. Big business, often externally owned, operating in global markets and regulated at UK and European levels, still privileges its relationships with London, while small businesses are more focused on the Scottish level and dependent on the public goods produced by the devolved administration. Trade unions have traditionally been able to operate at both the Scottish and the UK level. The Scottish Trades Union Congress (STUC), voicing distinct Scottish concerns, is quite separate from the Trades Union Congress (TUC), which covers the whole United Kingdom. Since devolution, the Scottish level of policy making has been reinforced in some unions, and the STUC has established a clearer conception of its role, concentrating on devolved matters while leaving reserved matters to the TUC. The voluntary sector has expanded following devolution, and become more involved in policy matters, encouraged by the presence of the Scottish Parliament and the new mechanisms of consultation. This has increased the amount of interest group activity in Scotland and its pluralism. One measure is the 54 groups that produced their own manifesto of items to be addressed by the parties at the 2003 Scottish elections.

Devolution has strengthened the Scottish political arena, since the Scottish Parliament and Executive have such substantial powers that no groups can afford to ignore them entirely or by-pass them by going straight to London. This makes a contrast with the English regions, where participation in the regional machinery is voluntary and groups that are discontented can walk away. In turn, this has produced a social dialogue in Scotland, in which groups, being in the same political arena, must address each other's concerns and gain a degree of political legitimacy. This effect is not to be exaggerated. Scotland is still not the level at which the main social compromises are made, and big business is still much more UK-oriented than is the voluntary sector, but it does affect the political agenda in Scotland.

There are still big differences in the extent to which policy communities operate at UK or Scottish levels. Primary and secondary education are debated within a Scottish framework among Scottish actors, as was largely the case before devolution. Big business is used to operating on a UK basis and still does. Universities, on the other hand, are used to operating in a highly articulated UK policy community, but have to adapt to a new dispensation. The 2003 White Paper on Higher Education in England has become a reference point for debate within Scotland, although it does not apply there. Where groups operate on both sides of the border, there is also something of an imitation effect, as those who complain about being treated worse demand parity. Business groups have

⁵ 79 interviews were conducted with representatives of interest groups in Scotland, most of whom were interviewed in 1999-2000 and again in 2003-4.

regularly complained about higher business rates in Scotland (although a proper comparison would have to take into account differences in rateable value).

Interest groups in all sectors have found it difficult to make the transition from lobbying for a Scottish share of whatever policy was going to formulating policy themselves. This has required additional resources and policy making capacity, which have only partially been found. Also needed is a change in attitudes, which has been more gradual. Among voluntary groups there was a period of euphoria following devolution, and of high expectations. Much was made of a 'new politics' in Scotland, with a greater role for participation, for social movements and for consensus and less for the parties and the old political class. In its more naïve versions, this seemed to postulate a form of non-politics, in which consensus would naturally emerge from deliberation and everybody would win. The rough reality of politics, in which compromises have to be made and participation does not always mean getting one's way, proved something of a shock. The voluntary sector also suffered something of a setback after 2002, with the return to influence of Labour's local government notables, who are competing for the same political ground as well as for control over local service delivery. Business groups were initially sceptical about devolution and suffered a loss of privileged access in 1997 with the change of government and again in 1999. Towards the end of the first parliamentary session, however, they started to come back into the Scottish networks as the Executive put more emphasis on economic development. There has also been some increase in horizontal contact among groups within Scotland to form territorial policy communities in areas like economic development, social exclusion or rural policy. By the elections of 2003 there was a broad consensus around the economic strategy document *Smart, Successful Scotland*, with its emphasis on the knowledge economy and the need for a social dimension to development.

Public Opinion

Most of the evidence gathered on public opinion in Scotland suggests a similar pattern to that in England, although with a small but persistent tendency in Scotland to prefer more public service provision, a larger role for the state and more redistribution (CURTICE et al., 2002). There is a marked difference in education, with Scottish voters much more inclined towards comprehensive schooling (BROMLEY and CURTICE, 2003). These differences might be attributed to the distinct class structure within Scotland, and there is indeed a larger working class. Closer examination, however, shows that the differences among the social classes within Scotland and England are actually rather small, but all social classes in Scotland are more redistributive than their counterparts in England (SURRIDGE, 2003). More revealing, perhaps, than people's objective social class as measured by occupation, is subjective self-identification. Scots are more likely than the English to describe themselves as working class, irrespective of their objective occupational class identity (SURRIDGE, 2003). Those identifying themselves as Scottish are also more likely to support redistributive economic policies (PATERSON, 2002). Scottish identity seems to have been reconstructed in the 1980s and 1990s around opposition to the neo-liberal policies of the Conservative governments of Margaret Thatcher and John Major, combining class, communitarian and national symbols and references. The resulting mixture is less a matter of precise views on public policy matters than a generalized 'moral economy' (HEARN, 2000), summed up in the critique

of neo-liberal excess, ‘it’s no fair’. So not charging up-front student fees, or providing free personal care for the elderly might be considered left-wing, since they are based on universal provision, or right-wing, as they benefit better off families most and are supported by the Conservative Party. Both policies, however, tap a sense of shared responsibility and community ethos that challenges the neo-liberal and market-driven assumptions of much public policy under successive British governments. This extends to the professions, where there also seems to be a greater commitment within the public sector in Scotland to universal public services.⁶ Political myths come into play here and can be exploited by competing political forces. Margaret Thatcher tried to portray the Scottish Enlightenment as a kind of proto-Thatcherism to show that her policies were not alien. The left, in its time, made much of legends of Red Clydeside and social struggle. What has emerged in recent decades is another reconstruction, in which national identity seems to play the role that ideology and class politics might have in the past. This should not be exaggerated, but it does provide a set of themes on which politicians can play, adapting their policies and rhetoric to shared assumptions and norms.

Political Parties

A strong factor for policy uniformity has been the presence in both London and Edinburgh of Labour-dominated administrations. It is not that London imposes policy from the centre, although UK some politicians do take a lot of interest in what is happening in Scotland and discourage innovations, like free personal care for the elderly or the abolition of up-front university tuition fees, which might provoke matching demands in England. It is more that Labour politicians in both jurisdictions share broadly the same ideas and party loyalties. Despite a common stereotype, Scottish Labour Party members are not less ‘New Labour’ than their counterparts in England (HASSAN, 2004). It is also a matter of strategy. Henry McLeish (First Minister 20001), in his brief tenure, was anxious to put a personal stamp on policy, which he did through free personal care for the elderly and signing the Declaration of Flanders, with the other ‘constitutional regions’ demanding a greater role in Europe (McLEISH, 2004). Jack McConnell (First Minister since 2001), on the other hand, has cleaved more closely to London, seeking to present a uniform Labour policy set and preventing ministers making any criticisms of English or reserved policy matters. This contrasts with Rhodri Morgan, First Minister of Wales, who has been unabashed in proclaiming his dissent from aspects of New Labour policy and his intention to limit their impact in Wales. Again McConnell’s calculation seems to be that he will get more from playing the loyal partner with London, and that any obvious difference would play into the hands of the nationalists. As a result, even where Scotland has diverged from England, as on public service delivery, there has been no effort to highlight the difference.

One contrast with England is the pattern of party competition, across the two key axes: the traditional left-right one; and the nationalism axis with its competing Scottish, British and European foci. In England, New Labour has faced competition from the right and from the British nationalist and Euro-sceptic quarter both embodied in the Conservative Party. This is not quite balanced by the Liberal Democrats, who are more libertarian and

⁶ A BMA survey in 2003 showed only 40 per cent of doctors in Scotland in favour of charging for home visits, against 58 across the UK (*Herald*, 29 April 2003). There is evidence of distinct attitudes also among Scottish academics (PATERSON, 2003).

distinctly more pro-Europe. New political movements in the last few years have been even further to the British nationalist right. In Scotland, the only competition Labour faces on the right is a weak Conservative Party which is itself rather moderate. Competing on its left it has the SNP, the Scottish Socialists, the Greens and, in many respects, the Liberal Democrats. On the unionist side it has only the weakened Conservative while on its home rule or nationalist flank it faces all four other parties. There is no serious Eurosceptic challenge in Scotland. Again, this is not merely a matter of the class structure of Scotland. Despite having a monopoly on the right, at the 2001 election, the Conservatives came third or fourth in every social category, apart from the petty bourgeoisie, where they equalled the SNP (BRITISH ELECTION STUDY, 2001). They have failed, rather, to rebuild in the 1980s the type of social coalition that had made the Conservatives Scotland's leading party in the 1950s. Nor is the absence of Euroscepticism in Scotland simply a reflection of public opinion, since the electors are only mildly less Eurosceptic than those in England, and even this does not hold for SNP voters. It is a matter of the supply of policies rather than the demand, as both the parties and social elites have constructed a link between Scottish home rule and Europe. All this has helped frame public debate in Scotland somewhat to the left and to the pro-European side of that in England and shaped the policy agenda accordingly.

Coalition politics has also affected policy in Scotland. The Liberal Democrats were critical in the abolition of up-front tuition fees and free personal care, freedom of information and law and order (see below). They are also single-handedly responsible for the promise to introduce proportional representation in local government. This is not just a policy in itself but one that promises dynamic effects in further increasing political competition in Scotland and undermining a key power base of the old Labour Party.

Policy Capacity

The Scottish Executive in 1999 took over a substantial administrative machine from the old Scottish Office. Yet most Scottish Office departments were not there to make policy but to apply it and have had to strengthen their policy capacity, starting from different levels. The Executive also inherited a very uneven research base. There was a substantial effort in housing and education and an agricultural research budget out of all proportion to Scotland's share of UK agriculture, but big gaps in other fields. Some new capacity has developed within departments since 1999, but it does not always seem sensible simply to duplicate what is being done in Whitehall if there is no demand for a distinct policy. Research has been rationalized with a stronger central research department. In 2004 a new Permanent Secretary reorganized the Executive to provide a stronger policy focus at the centre. The size of the Scottish system, however, precludes anything as powerful as the Treasury has been in recent years within Whitehall. Policy ideas also come through local government practice, through agencies, and from interest groups. Departments, however, still lack the knowledge base that would allow them to redefine issues and problems.

Much innovation in UK government has come recently from the various policy units at 10 Downing Street and from the Treasury, and the Scottish Executive is involved in these initiatives and experiments (PARRY, 2001). These initiatives, however, tend to be ad hoc and to involve new ideas rather than mainstream policy. There are no Public Service

Agreements in Scotland, so that the Scottish Executive is outside the new centralism imposed by the Treasury on Whitehall and is able to go its own way.⁷

Scotland does not have the range of think tanks that have been so influential in British government in recent decades, although there has been some expansion. This has left the field to neo-liberal and New Labour think tanks to export ideas from England. The ideological hegemony of these ideas has often left Scottish policy-makers on the defensive, unable to articulate an alternative even when, as with public service delivery, they are practising it.

Finance

Scotland's financial settlement is unusual in international comparison, since it combines a transfer accounting for the whole of the Executive's own spending with complete freedom of allocation. What is also unusual is that changes in the block each year are calculated by reference to functional allocations for England, but that these have no binding effect on the functional allocations once the money comes to Scotland. It might be expected that interest groups would be alert to this, and insist on parity with England.⁸ There is a little evidence for this. In 2001, for example, the Chancellor announced additional money for health in England, between spending rounds. The Scottish Executive felt obliged to pledge that the Scottish share generated under the Barnett formula would also go to health; but later noted that this did not necessarily mean the same priorities within health. It is not, however, possible for groups to demand this kind of matching across the range of public services, since the information does not exist to make the comparisons. In the first place, the functional headings in the Scottish budget are different. Second, reporting practices differ.⁹ Third, a great deal of expenditure is passed on to local government and this is no longer reported under functional headings, merely as a local government block. Scotland is thus forced to decide its own priorities and cannot fall back on English choices as a default option.

Block funding does, however, constrain Scottish discretion in other ways. As the Scottish Executive does not have borrowing power, it would be forced to use the Private Finance Initiative for capital projects even if it did not want to, or try to fund them all out of current revenue (the Welsh Assembly Government, opposed to PFI, has this problem). Block funding also prevents Scotland from making a choice between low taxation and high spending, a key issue in any modern democracy, or between financing services from fees or taxes. Already, the Scottish Parliament has opted for free personal care for the elderly and to abolish up-front university tuition fees. The problem is exacerbated as the government proposes to finance English universities partly from fees, a policy rejected by the Scottish Executive. Should a future UK government introduce fees more widely, for example in health, this question could become acute. Conservative Party proposals to provide tax relief for private health care instead of increasing spending on the National

⁷ I do not agree with the idea of ADAMS AND ROBINSON (2002) that the Treasury has become the new centre for UK domestic policy including the devolved administrations.

⁸ Strict parity would mean the application of the 'Barnett consequential' to Scotland. This would provide cash increases per capita for each service equal to England. It would not mean the same percentage increase, because of the historically higher levels in Scotland.

⁹ Expenditure plans are reported sometimes as 'departmental expenditure limits' and sometimes as 'annual managed expenditure' (including items outside the Barnett block). They are not consistently reported in the same form in the English and the Scottish documents.

Health Service (NHS), would reduce the prospective transfers to the Scottish Parliament. Given the distribution of public and political opinion in Scotland, it is inconceivable that, left to their own devices, Scots would opt for this mode of provision but, if England led they would have to follow.

Divergence in Practice

At the start of this paper, I indicated that policy divergence under devolution was constrained by contextual and political factors. There was scope, however, for shaping the way in which policy was delivered and that this was greater than under the old Scottish Office. As I also indicated, it is difficult to draw a sharp line between differences in policy and differences in emphasis and priorities. There is pressure for divergence from party competition and from emerging Scottish policy communities. On the other hand, the UK departments remain a powerful force of policy ideas, UK policy communities are strong, the policy agenda is often set at the centre and there is a consequent policy drag from England.

The greatest policy divergence concerns modes of public service delivery. New Labour in both Scotland and England is committed to the welfare state and services largely free at the point of use, and both have been influenced by New Public Management ideas. Labour in England, however, has moved furthest away from the ideal of uniform, public provided services towards differentiation, internal markets and mixed models of service delivery. This is partly a response to the different challenges facing social democracy in the two jurisdictions. In England, faced with a drift of the middle classes to private health and education, New Labour has sought to provide them with their own niche within the welfare state. In Scotland the challenge is less acute.¹⁰ It also reflects the pattern of public opinion in Scotland, although it would be a mistake to read public policy directly from mass opinion. Rather party competition and the structure of policy communities in Scotland have sustained a consensus around these themes, drawing on public opinion and shaping it in turn. The difference was apparent in the health service from an early stage (WOODS, 2002; GREER, 2004). Scotland has not reintroduced internal market elements as in England, and there are no star ratings or foundation hospitals. Scotland has placed more emphasis on local government as a service provider and less on the voluntary sector. There is an explicit commitment to comprehensive education, largely abandoned in England and there are no school league tables in Scotland. All parties in the Scottish Parliament have rejected top-up fees for universities, and there is no move to create elite universities or concentrate all the research funding in a few institutions.

Scotland has also been less inclined to 'targetry', the setting of detailed targets for bits of public services, a practice long criticized for giving perverse incentives. It is not that the Scottish Executive does not have targets, but they are less in number and less detailed. One reason for this is no doubt the inability of the Treasury to impose Public Service Agreements on Scottish departments. These have led to a marked centralization of policy making in England, both horizontally, across government departments, and vertically, as local governments and the regional development agencies are also drawn in. In the absence of devolution, the Scottish Office would also have been part of this

¹⁰ Private health care covers a tenth of the Scottish population but a quarter in south of England. 3.4 per cent of Scottish children are in private schools, against 10.8 per cent in south east England.

process, so that if we compare devolved government not just with what when before but with what would have happened in its absence, it is clear that it has made a difference.

Policy style has also differed in Scotland. There was a great deal of consultation in the first session, in line with commitments made before devolution, although this generated a certain frustration and weariness among the consultees. Policy making is more deliberative, with less of a tendency to claim to know all the answers and more willingness to explore issues. The reasons for this are various, including the commitment at the outset of devolution to a more inclusive style, and the role of the committees in the Scottish Parliament. Another factor is that the weakness of policy capacity in the Scottish Executive departments forces them to rely more on the broader policy networks. For the same reason there has been less centralization, with local government and agencies in areas like health, higher education or economic development given greater scope. The resulting style sometimes comes across as a vagueness of objectives or a lack of strategic direction. It is variously praised as 'new politics' and 'stakeholder involvement', or criticized, especially from the New Labour perspective, as pandering to 'producer interests' (HASSAN and WARHURST, 2002) but it is certainly distinct. This has meant that even although the policy agenda in Scotland is very similar to that in England, some issues, such as social inclusion, economic development or rural policy, have been framed rather differently and that policy linkages have been rather distinctive. For example, in securing wider access to higher education, the Scottish approach has been to work at a number of levels while seeking to learn more about the obstacles to inclusion, in contrast to the English intention to set targets and police them through a centralized 'access regulator'. The linkage between higher education institutions and economic development is being developed in a different way, although the basic idea has now come on to the regional development agenda in England.

Another broad difference concerns law and order. Care has been taken to ensure that criminals cannot take advantages of lacunae in Scottish and English law, sometimes with Sewel resolutions¹¹ allowing Westminster to seal the gaps. On the other hand, on matters of criminal procedure and law, Scotland has been less authoritarian than England under Home Secretaries Jack Straw and David Blunkett. Coalition politics was largely responsible here, as the Justice Portfolio was held by Jim Wallace of the Liberal Democrats, who clashed with Jack McConnell during the 2003 election campaign over proposals to gaol parents of delinquent children.¹² In the coalition agreement after the election, the proposal was watered down almost out of existence. Labour did, however, take the portfolio after the election and a series of populist measures was brought forward.

European constraints are well illustrated by two issues agriculture, the reform of the Common Agricultural Policy (CAP) with its moves from production subsidies; and the issue of genetically-modified (GM) crops. In the first phase of CAP reform under Agenda 2000 the Scottish Executive sided with Scottish farmers who were not keen on 'modulation' the reduction of production payments and their diversion into rural development measures. Variation was allowed at the Member State level but not within,

¹¹ This is a provision whereby the Scottish Parliament can ask Westminster to legislate in devolved matters (CAIRNEY and KEATING, 2004).

¹² Henry McLeish also complained that the Liberal Democrats were too soft on law and order (McLEISH, 2004).

so the UK departments needed to agree. Eventually, Scotland went along with modulation but on condition that the Treasury provided the necessary matching funding directly.¹³ It then passed the modulated payments largely back to the farmers. In the 2003 reform round, it succeeded in getting the right to apply modulation as well as the new 'decoupling' arrangements differently in Scotland. The result was a rather different decoupling regime in Scotland, but within the limits of European policy. On GM crops, there was a significant divergence, given the widespread opposition to GM in the Scottish Parliament. Yet a unified policy was necessary for the United Kingdom, all parts of which need to agree on placing items on the national seed list. Given the political impossibility of Scotland vetoing GM crops for the whole UK, the Scottish Executive in 2004 announced that it would go along with GM planting but called for a voluntary moratorium by Scottish farmers. These two issues show how the Scottish Executive can be caught between European and UK requirements and political opinion in Scotland, with little room for manoeuvre.

More attention, however, has been given to three explicit departures from English policy. One was the decision to implement the recommendations of the Sutherland Report on free personal care for the elderly. This caused considerable problems with London because of the precedent it set, and for breaking with the uniform welfare state provisions that had hitherto prevailed. In practice, the difference with England may not be as great as trumpeted, since it all comes to down to exactly how much money is available to provide precisely which services to whom. A second issue was the decision on university tuition fees. Again the difference is muted since the fees were not abolished but postponed until after graduation; a much bigger challenge will be posed by the £3000 top-up fees now proposed in England, which Scotland has explicitly rejected in the coalition agreement of 2003. In both cases, policy divergence was limited by the funding formula since Scotland cannot choose to fund services from taxation rather than charges; a compromise had to be found that was affordable within existing budgetary constraints. The third issue is Freedom of Information, where Liberal Democrat control of the relevant portfolio ensured a somewhat more liberal law. The differences are small but significant, the most important hinging on a difference between a test of 'prejudice in England and 'seriously prejudice' in Scotland and whether the minister has the last say on whether information can be withheld in all circumstances. Ministerial and civil service pressure, on the other hand, watered down the Scottish as well as the UK legislation.

A final set of policies concerns matters with no equivalent in England and here Scotland has been able to proceed on its own. The most important was the Land Reform Act, fulfilling historic ambitions of the Labour and Liberal Parties. Land reform had been held up in the past not by England but by the weight of landowners within Scotland and their links into the old system. It is thus an example of power shifting within Scotland following devolution. Even with a sympathetic Labour government in London, it is unlikely that such a large and complex bill could have gained time at Westminster or have survived guerrilla tactics in the Commons and the Lords.

¹³ If the money had gone through the Barnett formula, Scotland would have gained less.

Conclusion

Policy making in modern government is often an incremental process, punctuated by bold initiatives. Policy-making in devolved and federal systems is further constrained by complex patterns of intergovernmental relations and interdependencies. The policy agenda in Scotland is not greatly distinct from that in England, or indeed other parts of Europe, with a few exceptions such as land reform. There is some variation at the level of policy framing, which itself often stems from the distinct policy style and the need in Scotland to negotiate policy with a range of groups of different political weights. This has produced a slow but persistent trend to divergence in public policy most notable in service provision where Scotland (and Wales) retain the traditional social democratic model linked to the public service professions. It may be that England is diverging from Scotland rather than the other way around, but divergence is certainly there. The use of distinct instruments, the final level of divergence identified earlier, is not new, but has increased since devolution. These forms of divergence have so far not presented a challenge to the devolution settlement itself, but if England continues to move in the direction of charging for public services or using distinct financial instruments such as foundation hospitals with the ability to borrow on the market, then the question of fiscal autonomy for Scotland, already subject to considerable debate, will become more urgent.

There have been few radical initiatives in Scotland, and the present administration seems to be disinclined to produce many. Labour in England and Scotland is committed to much the same priorities of economic growth tempered by social inclusion. There were suggestions in 2004 that Jack McConnell was seeking to bring the Scottish Labour Party more in line with that of New Labour in England on matters of public service reform. Already in the second session there were signs of a more confrontational style, as ministers started attacking 'vested interests' in the legal profession and elsewhere. So we will have to await a change of government to look for dramatic divergence.

On the other hand, devolution here as elsewhere can provide laboratories for innovation on individual policy items. Intergovernmental influence has not all been one way. There has been a degree of innovation within the devolved governments, some of which has been imitated by others. The idea of a Children's Commissioner, pioneered in Wales, was extended first to Scotland and then to England. The Scottish system of postponed payment is being adopted for the English university top-up fees. So devolution may promote not just divergence or convergence but cycles of innovation, in which innovation produces divergence, followed by reconvergence on the new idea.

This paper is based on research supported by ESRC grant L219 25 2020 under the programme on Devolution and Constitutional Change. A fuller treatment is given in KEATING (2005).

References

- ADAMS, J and ROBINSON, P. (2002) Divergence and the centre, in ADAMS, J. and ROBINSON, P. (eds), *Devolution in Practice. Public Policy Differences within the UK*. London: Institute for Public Policy Research.
- BALME, R, GARRAUD, P., HOFFMAN-MARTINOT, V. and RITAINE, E. (1994), *Le territoire pour politiques: variations européennes*. Paris: l'Harmattan.

- BRASSINE, J. (1994) *La Belgique fédérale*. Brussels: CRISP.
- BROMLEY, C. and CURTICE, J. (2003), Devolution: Scorecard and Prospects, in BROMLEY, C., CURTICE, J., HINDS, K., AND PARK, A., *Devolution. Scottish Answers to Scottish Questions. The Third Scottish Social Attitudes Report*. Edinburgh: Edinburgh University Press.
- BULMER, S., BURCH, M., CARTER, C., HOGWOOD, P. and SCOTT. A. (2002) *British Devolution and European Policy-Making. Transforming Britain into Multi-Level Governance*. London: Palgrave.
- CAIRNEY, P. and KEATING, M. (2004) Sewel Resolutions in the Scottish Parliament, *Scottish Affairs*, 47, pp.115-34
- CURTICE, J, MCCRONE, D., PARK, A. and PATERSON, L. (2002) *New Scotland, New Society?*. Edinburgh: Polygon.
- De RYNCK, S. (2002) *Changing Public Policy. The Role of the Regions*. Brussels: PIE-Peter Lang.
- GREER, S. (2004) *Four Way Bet: How devolution has led to four different models for the NHS*. London: The Constitution Unit.
- HALL, P. and TAYLOR, R.C.R. (1996) Political Science and the Three New Institutionalisms, *Political Studies*, 44.5, pp.936-57.
- HASSAN, J. (2004) 'The People's Party, Still?', in Hassan, J. (ed.), *The Scottish Labour Party. History, Institutions and Ideas*. Edinburgh: Edinburgh University Press.
- HASSAN, G. and WARHURST, C. (2002) Future Scotland, in Hassan, G. and Warhurst, C. (eds), *Tomorrow's Scotland*. London: Lawrence and Wishart.
- HOUSE OF LORDS (2002) Select Committee on the Constitution. Session 2002-3, *Second Report, Devolution: Inter-Institutional Relations in the United Kingdom, HL Paper*, 28. London: The Stationery Office.
- ISSiFRA (2003), *Primo Rapporto annuale sullo state del regionalismo in Italia*. Milan: Guiffè.
- KEATING, M. (2001) Scottish Autonomy, Now and Then, *Scottish Affairs*. special issue, (2001), pp.91-103.
- KEATING, M. (2005) *The Government of Scotland. Public Policy Making after Devolution*. Edinburgh: Edinburgh University Press.
- KEATING, M. and MIDWINTER, A. (1983) *The Government of Scotland*. Edinburgh: Mainstream.
- KEATING, M. and CARTER, C. (1987) Policy Making in Scottish Government. The Designation of Cumbernauld New Town, *Public Administration*, 65.4, pp. 391-405.
- KEATING, M., LOUGHLIN, J. and DESCHOUWER, K. (2003) *Culture, Institutions and Economic Development. A Study of Eight European Regions*. Aldershot: Edward Elgar.
- KEATING, M., STEVENSON, L., CAIRNEY, P. and TAYLOR, K. (2003) Does Devolution Make a Difference? Legislative Output and Policy Divergence in Scotland, *Journal of Legislative Studies*, 9.3.
- KELLAS, J. (1989) *The Scottish Political System*. 4th edn., Cambridge: Cambridge University Press.
- MACKINTOSH, J. (1973) Review of Kellas, The Scottish Political System, *Political Quarterly*, 44.3, pp.368-70.
- McLEISH, H, (2004) *Scotland. Truth and Consequences*. Edinburgh: Mainstream.

- MIDWINTER, A., KEATING, M. and MITCHELL, J. (1991) *Politics and Public Policy in Scotland*. London: Macmillan.
- MOORE, C. and BOOTH, S. (1989) *Managing Competition. Meso-Corporatism, Pluralism and the Negotiated Order in Scotland*. Oxford: Clarendon.
- NEGRIER, E. and JOUVE, B (1998), *Que gouvernent les régions d'Europe : échanges politiques et mobilisations régionales*. Paris : L'Harmattan
- PARRY, R. (2001) Devolution, Integration and Modernisation in the United Kingdom Civil Service. *Public Policy and Administration*, 16:3, pp.53-67.
- PATERSON, L. (1998) Scottish Home Rule: Radical Break or Pragmatic Adjustment, in ELCOCK, H. and KEATING, M. (eds) *Remaking the Union. Devolution and British Politics in the 1990s*. London: Frank Cass.
- PATERSON, L. (1994) *The Autonomy of Modern Scotland*. Edinburgh: Edinburgh University Press.
- PATERSON, L. (2003), The survival of the democratic intellect: academic values in Scotland and England. *Higher Education Quarterly*, 57, pp.67-93.
- ROSS, J. (1981), The Secretary of State for Scotland and the Scottish Office, *Studies in Public Policy*, 87. Glasgow: University of Strathclyde.
- STEINMO, S., THELEN, K and LONGSTRETH, F. (1992) *Structuring Politics. Historical Institutionalism in Comparative Perspective*. Cambridge: Cambridge University Press.
- SUBIRATS, J. and GALLEGO, R (2002), *Veinte años de autonomías en España. Leyes, políticas públicas, instituciones y opinión pública*. Madrid: Centro de Investigaciones Sociológicas.
- WOODS, K. (2002) Health Policy and the NHS in the UK 1997-2002, in ADAMS, J. and ROBINSON, P. (eds), *Devolution in Practice. Public Policy Differences within the UK*, London: Institute for Public Policy Research.