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Wales between Capacity and Constraint

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Devolution and Governance: Wales between Capacity and Constraint

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Preface and Acknowledgements

In the most immediate sense, *Devolution and Governance: Wales between Capacity and Constraint* owes its genesis to a Leverhulme Trust International Network on Territorial Governance in Western Europe (IN–2012–109) that has been running since 2012. This project is explicitly a comparative one, setting out to investigate four 'second-order strong identity regions' in a period of economic crisis. Some 25 interviews were carried out in Wales in 2012–2013, and these were followed in 2013–2014 by comparable panels in Brittany (France), Andalucía (Spain) and Wallonia (Belgium). In the four countries, interviews were conducted in relation to three groups: devolved government, sub-national or regional state actors; representatives of professional and policy communities in the fields of public finance and secondary education; and elected representatives with competence in the field, controlled for by party affiliation. The data presented draws liberally on these interviews which gave the actor-focused dimension of the research a real added value. We thank our interlocutors immensely, and we trust that we have been faithful to the spirit of the exercise.

As the process of writing the book gathered pace, Alistair Cole and Ian Stafford encouraged each other to draw inspiration from their earlier fields of investigation; going back to 2001–2002 for the former, and 2004–2005 for the latter. The result is a book that is very much rooted in the second decade of devolution, but which draws upon past testimony about what is still a relatively novel institutional and political experiment. The book does not engage in

extensive normative, political or legal reflection into likely institutional futures, or identity configurations. Nor do we provide a detailed electoral sociology of the evolution of the social groups supporting or opposing devolution or voting for specific parties in elections. These dimensions have been more than adequately dealt with elsewhere. Our investigation produced five distinct perspectives: a *long durée* understanding of radical constitutional innovation; taking seriously the early frames and representations of Welsh distinctiveness; applying the insights of comparative policy analysis in two fields where devolution has a stake in governance; mapping the challenges ahead; and using multi-level governance as an entry point to appreciate the development of a Welsh polity. Answering the questions linked to these perspectives required a broader effort than the initial 25 interviews could have provided. Though the analysis is primarily based on the fieldwork carried out between November 2012 and July 2013, the analysis also draws on earlier periods of fieldwork conducted by the two authors, in order to capture longitudinal contrasts and evolutions.

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Devolution in Wales between Capacity and Constraint

Abstract: *Cole and Stafford provide a timely examination of territorial governance and political capacity within the context of economic crisis and political change. The chapter examines the core research question: are contemporary European states – subject to powerful and converging economic, ideational and institutional pressures – driven to enforce new forms of territorial convergence? Focussing on the case of Wales, the chapter introduces the material and constructed dimensions of territorial governance and political capacity in order to provide a multi-dimensional analysis. As well as providing this analytical framework, Cole and Stafford examine the development of devolution in Wales since its introduction in 1999 and place these devolved governance arrangements within the wider comparative context.*

Introduction

The introduction of devolution by the Labour Government in 1999 fundamentally recast the territorial governance of the United Kingdom. Indeed, Bradbury and Le Galès (2008, p.203) note that 'gone are the days when the view could still go relatively unchallenged that the UK was a unitary and centralised state, mostly homogeneous and integrated despite minor territorial differences'. The introduction of devolution reinvigorated debates regarding the extent to which the United Kingdom, in both the pre- and post-devolution settings, could be characterised as a 'unitary state', 'union state', 'quasi-federal state' or 'state of unions' (Mitchell, 1996, 2004, 2009; Bradbury, 1997, 2006; Bogdanor, 2003; Gamble, 2006). This book is first and foremost about Wales in an asymmetrical United Kingdom at a time of great economic and institutional uncertainty.

This process of state 'rescaling' has also been identified as part of a wider European trend which has arguably led to the redistribution of responsibilities between multiple levels of governance, both upwards to supranational organisations, notably the European Union (EU), and downwards to regional and sub-national territories (Rodriguez-Pose and Gill, 2003; Lidström, 2007; Lobao et al., 2009). As Loughlin (2007, p.386) argued, this process of the rescaling of responsibilities and functions across different levels of government 'needs to be situated in the context of broader economic, political and administrative transformations that underlie the new complexity of territorial governance'. The influential but slippery concept of multi-level governance has sought to capture this complex array of phenomena (Hooghe and Marks, 2001; Bache and Flinders, 2004). The book broadly frames Welsh governance in a comparative and multi-level context, drawing on fieldwork carried out in Wales and three cognate regions (Brittany, Andalucía and Wallonia) in France, Spain and Belgium as part of the Leverhulme Trust's International Network on 'Territorial Governance in Western Europe: Between Convergence and Capacity'.[1]

In her significant contribution to the multi-level governance literature, Piattoni (2010, p.257) argues that processes of vertical and horizontal state rescaling associated with the concept are framed and mediated by state traditions or the 'competences, knowledge and values that are associated with specific territorial jurisdictions'. The model of devolution adopted within the United Kingdom, for example, was characterised by a high

degree of asymmetry, reflecting the contrasting pre-devolution contexts within England, Northern Ireland, Scotland and Wales (Bogdanor, 1999; Mitchell, 2009). Jeffery (2007, p.101) contends that the piecemeal and asymmetric nature of devolution – combined with the absence of a 'normative underpinning for the post-devolution UK State' – meant that 'it is unclear amid the UK's asymmetries and flexibilities where the limits to constitutional tinkering are, where the boundaries of legitimate devolved aspirations lie in the context of a shared statehood'. Indeed it is almost impossible to understand the processes and factors which have shaped the evolution of devolution in Wales since 1999 in isolation from wider debates regarding the constitutional future of the United Kingdom and in recent years the debates regarding Scottish independence and the continued failure to address the 'English Question' (Hazell, 2008; Wyn Jones et al., 2013). This book takes into account the need to engage in varying levels of analysis in order to capture the originality of Welsh governance in a comparative and multi-level context.

Most writing on devolution in the first decade emphasised legal powers, shared or incomplete competencies, executive devolution, intergovernmental relations and the development of Wales as a quasi-polity (Laffin et al., 2000; Morgan and Mungham, 2000; Rawlings, 2003; McAllister, 2005; Trench, 2007; Bradbury, 2008; Wyn Jones and Scully, 2012). These important dimensions are not absent from this book, but our core aims are rather different. We do not engage in extensive normative, political or legal reflection into likely institutional futures or identity configurations. Nor do we provide a detailed electoral sociology of the evolution of the social groups supporting or opposing devolution or voting for specific parties in elections. This field has been extensively covered elsewhere, notably by our colleagues Wyn Jones and Scully (2012). Instead the research explores the context of economic crisis, institutional uncertainty and comparative soul-searching that prevailed at the time that most of the empirical investigation took place (November 2012–July 2013).

Rather than frame devolution in terms of an inexorable progress towards a political or institutional end-game, this book emphasises contingency, doubt and dependency upon exogenous forces (Scotland, United Kingdom, EU) as much as endogenous dynamics. In particular, the book provides an examination of how conflicting pressures towards convergence and divergence have shaped the devolutionary project. First and foremost, has the economic crisis undermined or reversed the

seemingly relentless trend towards devolution? Or has it, at least, limited the extent to which sub-national regional administrations are able to pursue policy variation?

The book draws on an analysis of official documents and on twenty-five core semi-structured interviews conducted in 2012–2013 in relation to three cognate groups: devolved government, sub-national or regional state actors; representatives of professional and policy communities in the fields of public finance and secondary education; and elected representatives with competence in the field, controlled for by party affiliation. The analysis also draws on earlier periods of fieldwork conducted by the two authors – in order to capture longitudinal contrasts and evolutions – though it is primarily based on the fieldwork carried out between November 2012 and July 2013.[2] These interviews were analysed using computer assisted qualitative data analysis software and quotation marks are used throughout to identify key issues highlighted by this analysis. The method adopted was the most appropriate one for the task in hand. Individual interviews provide important evidence about the conduct of relationships, fuller accounts than possible in any written documents. Interviews were also valued in cognitive-normative terms as perceptions of reality articulated by actors to make sense of their role and fuse personal, institutional and professional experiences. Consistent with interpretive frames, we see no contradiction between these institutionalist and cognitive-normative dimensions (Della Porta and Keating, 2008; Bevir and Rhodes, 2003). The resulting narrative provided a mix of material and constructed realities about the evolution of Welsh devolution.

Devolution in Wales: an evolutionary perspective

The evolving nature of the devolution settlement within Wales has more than matched the characterisation of devolution by Ron Davies (1999), the former Secretary of State and architect of devolution, as 'a process not an event' and has existed in a state of almost permanent revolution (see Table 1.1). The latest stage in the incremental development of devolution within Wales was signalled by the resounding 'Yes' vote in the referendum on the Assembly's law-making powers on 3 March 2011 (Stafford, 2011; Wyn Jones and Scully, 2012). The new powers conferred on the Assembly as a result of the referendum have been characterised

TABLE 1.1   *Milestones in the evolution of the Welsh devolution settlement*

September 1997	Referendum on devolution for Wales; 50.3% of the Welsh public vote 'I agree that there should be a Welsh Assembly'
July 1998	Government of Wales Act 1998 is passed, allowing for the creation of the first National Assembly for Wales
July 2000	Assembly Review of Procedure launched
October 2000	Coalition partnership between Labour and the Liberal Democrats announced and adoption of term 'Minister' in place of 'Secretary'
November 2001	First Minister, Rhodri Morgan, announces in Plenary that the term 'Welsh Assembly Government' will in future be used to describe the Welsh Cabinet
February 2002	Assembly Review of Procedure adopted by Plenary – voting unanimously that 'there should be the clearest possible separation between the Government and the Assembly which is achievable under the current legislation'
April 2002	Richard Commission established to consider the powers and electoral arrangements of the National Assembly for Wales
March 2004	Richard Commission report is published – recommendations include move to primary law-making powers by 2011, desirability of taxation powers, increase in size of Assembly and formal separation of executive and legislature
June 2005	UK Government White Paper 'Better Governance for Wales' published
December 2005	Draft Government of Wales Bill published
July 2006	Government of Wales Act 2006 receives Royal Assent, providing the phased increase in Assembly powers: Part 3 (produce Assembly Measures within specific matters contained within 20 broadly defined fields) and following successful referendum Part 4 (general competence to produce Assembly Acts)
June 2007	One Wales Coalition Agreement commits to set-up an All Wales Convention to assess the effectiveness of Part 3 arrangements and levels of public support for full law-making powers and 'to proceed to a successful outcome of a referendum for full law-making powers under Part 4 as soon as practicable, at or before the end of the Assembly term (2007–11)'
November 2009	All Wales Convention on the Assembly's law-making powers is published – recommended move to Part 4 and identified support for move
March 2011	Referendum on Assembly law-making powers: 63.5% vote yes, 36.5% vote no
October 2011	UK Coalition Government announces membership and terms of reference of the Silk Commission to review the case for the devolution of fiscal powers to the Assembly and the powers of the Assembly

Continued

TABLE 1.1   Continued

November 2012	Silk Commission publishes its Part 1 report – 'Empowerment and Responsibility: Financial Powers to Strengthen Wales'
November 2013	HM Treasury & Wales Office publish response to the Part 1 report – 'Empowerment and responsibility: devolving financial powers to Wales'
December 2013	UK Coalition Government publishes the Draft Wales Bill 2013 for pre-legislative scrutiny
March 2014	Silk Commission publishes its Part 2 report – 'Empowerment and Responsibility: Legislative Powers to Strengthen Wales'

as representing 'a qualitatively different constitutional settlement for Wales' in comparison to the limited form of 'executive devolution' established by the Government of Wales Act 1998 or the intermediate stage of legislative powers introduced by Part 3 of the Government of Wales Act 2006 (Miers, 2011, p.27). Under the latter arrangements the Assembly was given primary legislative powers over a limited range of matters within 20 policy fields and it was able to add matters with the consent of the UK Parliament (Navarro and Lambert, 2007). In contrast, the Assembly's new powers, outlined in Part 4 of the 2006 Act, enable the National Assembly for Wales for the first time to develop primary legislation within all of the 20 devolved policy areas without reference to Westminster. However, these arrangements are still fundamentally shaped by the underlying principle of 'devolution by inclusion' rather than the general legislative competence or reserved powers model which characterises devolution in Scotland and Northern Ireland and remains subject to a range of exclusions (Miers, 2011, p.32).

The margin of the 2011 'Yes' vote (63.5 per cent voting 'yes', 36.5 per cent voting 'no') provided greater weight to the argument that devolution could increasingly be seen as the 'settled will' of the Welsh electorate and to a degree laid to rest the ghosts of the failed 1979 referendum and the wafer thin majority delivered by the 1997 referendum (National Assembly for Wales, 2011). However, the extent to which the post-2011 referendum settlement will endure 'for some years to come', as argued by Paul Murphy, the former Secretary of State for Wales, or simply mark another staging post in Welsh devolution's journey remains open to question (BBC, 2011a). The election of the Conservative-Liberal Democrat Coalition Government at the UK level in May 2010 potentially introduced a brake on Welsh devolution given the Conservative

Party's historical antipathy to devolution and the threat of political incongruence in driving a deterioration of intergovernmental relations (Wyn Jones and Royles, 2012). However, Wyn Jones and Scully (2012, p.162) argue that the tortuous progress of the first decade of devolution could be chiefly attributed to 'one-partyism' within Wales and Labour's position of power at Westminster, which dictated that 'all the major decisions on the models of devolution to be pursued have been made within the Labour Party; the decisions made have reflected the internal politics and balance of forces within that party'. The introduction of full party political incongruence following the 2010 General Election could be seen as simply replacing a set of intra-party constraints with an inter-party dynamic.

The UK Coalition Government's Programme for Government included commitments to introduce a referendum on further Welsh devolution and, depending on the result of the referendum, 'establish a process similar to the Calman Commission for the Welsh Assembly' (HM Government, 2010, p.28). In October 2011, following the successful March referendum, the Coalition established the all-party Commission on Devolution in Wales, chaired by Paul Silk, former Clerk to the National Assembly for Wales. The Silk Commission was established to 'review the present financial and constitutional arrangements in Wales' and its work was divided into two core parts (Commission on Devolution in Wales, 2011; see Figure 1.1).

The Silk Commission published its report on taxation and borrowing powers in November 2012 and made 33 recommendations including

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Part 1: Financial Accountability

To review the case for the devolution of fiscal powers to the National Assembly for Wales and to recommend a package of powers that would improve the financial accountability of the Assembly, which are consistent with the United Kingdom's fiscal objectives and are likely to have a wide degree of support.

Part 2: Powers of the National Assembly for Wales

To review the powers of the National Assembly for Wales in the light of experience and to recommend modification to the present constitutional arrangements that would enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales.

FIGURE 1.1   *Terms of Reference of the Silk Commission.*

Source: Commission on Devolution in Wales, 2011.