

REVIEW: THE STATE OF THE NATIONS

Fred Nash

A. Trench (ed.) (2001), **The State of the Nations 2001**, Exeter, Imprint Academic, £14.95 (pbk), 283 pp., ISBN 0 907845 19 3

Year three of the 'Era of Devolution' is past, and although it is far too early to take stock of the situation, nevertheless, many have devoted time and resources to its study. However, in the nature of things, such research is only work in progress on change in progress (!), which raises the question of the academic value and contribution of such studies. In the circumstances we cannot really expect much more than the type of review that this book offers. But annual reviews have their own particular problems, as the Scottish and English experiences show. In part the problem is defined by the very objective: an annual review is limited in its very nature by the immediacy of the subject and the availability of material, and the fact that history has not yet happened. Andrew Gamble in his gentle comments in reviewing the first book in this series (**Times Higher Education Supplement**, 4/1/2002) avers that the questions raised but not tackled in this book will become clearer at the end of the five-year period! Quite: but devolution is a potentially significant departure in the British system of government, and an annual review of its progress may be justified.

The book under review is the second in the series. The first was praised and vilified in almost equal measure as non-partisan or partisan, as endorsing government policy or critical of the achievements of the Labour government. So, how fares this volume? In my view, as academic contribution it is too political, and as political contribution it is misplaced. Anyhow, structurally the book falls into two distinct parts and we should examine each separately.

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The first (chapters 2 –5) deals with 'the Nations': these are essentially updated versions of the various Monitoring reports already issued under the auspices of funded research based at the Constitution Unit.

There can be little doubt that the odd type of devolution installed in Wales is simply a recipe for discontent. It may well be that the Welsh knew better than their vociferous 'nationalist' leaders who desired and agitated for devolution: they rejected the earlier attempt and did not convincingly endorse this one. But against much sensible theoretical consideration, the Welsh were saddled with an oddity. We can accept, even though it is something of a gross exaggeration, that before devolution the government of Wales had functional capacity and no electoral legitimacy, and that this has been reversed with devolution. No wonder that there are moves afoot to appeal to the government at the centre with schemes that will improve it, along the lines of the Scottish system.

Writing about Northern Ireland is always hazardous. The generally sensible account on this topic suffers from the fact that decommissioning happened a few days after the text was completed. Even so, the chapter lays bare many of the issues that are often ignored in the routine analysis of the problems of the region. However, the authors take a rather gloomy view of its prospects – perhaps they would take a different view now – and blame an institutional design for forcing coalition upon the region, thereby removing the freedom of the electorate to choose their government: the authors prefer a system of voluntary coalitions. But the freedom of the electorate to choose the government was part of the problem that contributed to the collapse of Stormont system, and voluntary coalition requires conditions that are distinctly lacking in Northern Ireland.

One has to treat arguments about regional assemblies (never governments) in England with some considerable caution. John Tomaney demonstrates well enough, though not intentionally, the complete invisibility of the existing sub-national level of government, but, as Robert Hazell avers, regional assemblies, if they should ever come to pass, will have limited economic remit only.

The story of devolution in the United Kingdom is, in an important sense, the story of Scotland in recent decades, and the form of devolution granted to Scotland is indeed a workable one. This sense is well portrayed in the burgeoning literature on the subject as well as in the chapter by James Mitchell (et al). Yet the advocates of devolution are not satisfied, even though

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it was they, including some academics, that, engaging in much-publicised activities such as the 'constitutional convention' and generally talking up devolution, helped shape public opinion on the subject. Unreasonably high expectations were raised that almost equated a Scottish parliament and democratic self-government with an image of building 'Jerusalem' in Edinburgh; but the Labour government is also to blame for making unreasonable claims for the objectives, methods and principles of the devolution, over much of which they could have no control. These are naturally not met, and this contributes to the exaggeration of the inevitable defects of the new system. Governments are not cures for ills: they are means to (policy) ends and often contribute, if not create, problems of their own; bringing government home merely relocates the culprits. Euphoria over, politics resumes its humdrum face: is this what Mitchell (et al) mean when they say that people's expectations are now (more) realistic? Still they aver that many (constitutional? – actually devolution) issues remain unsettled; presumably this means that settling them will improve Scottish self-government. Perhaps, but if so, one wonders why they did not begin their chapter at this point and make a contribution to better government (or is it governance now?) in Scotland.

More generally, political theory is always tentative – a set of propositions – and history is an awfully bad guide to action. We cannot avoid versions of either, but must fall back upon our moral resources and sense of logic in devising forms of government as the means to ends, and by definition these are never perfect. It is not a sin to make political mistakes, but it is a mortal sin for social scientists to forget the fragility of theory and the contingency of history. Moreover, the only way to evaluate the success of devolved institutions is by the contribution they have made, or are perceived to make, to better governance: self-government may be an intangible, psychologically important part of devolution as an event, but after that come the practicalities of government. There are no objective tests and the best we can hope for is public opinion surveys and historical analysis.

Devolution was an event: even those who constantly talk it up as a process now acknowledge as much when they use the phrase 'post-devolution'. But this event – creating devolved institutions – has created the conditions for a re-structured (new?) type of politics: and politics – as much as governance – is always a process. It is unfortunate that some authors have taken Noreen Burrow's (in **Devolution**, Sweet and Maxwell, 2000) misplaced notion that the process of European integration is a good simile for the 'process of

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devolution' in the United Kingdom seriously, and without much analysis: the differences are simply too vast to warrant such a claim, such that invoking this notion is more likely to mislead than to inform and elucidate. If we are to take the European dimension into account, then the better concept would be that of the 'defence of centre': broadly, this concept states that when viewed from the perspective of the British centre, (constitutional) policy towards institutions (layers of government) above and below it are found to be mirror images of each other. However, given that all government, including the devolved, are only means to ends, we can only assess the success of such system with hindsight, and generally end up talking about its failures. And it should come as no surprise to find that already there are examples of failure in Scotland: the Scottish Qualifications Authority fiasco was not a policy failure or a result of devolution, but a distinctly administrative mess up. But, more importantly, there are systemic issues, such as the problem of leadership, the tendency of the electoral system to coalitions, not to mention the consequences of policy differences across the United Kingdom. British reticence of and resistance to Constitution-making has resulted in a devolved system that was not properly worked out – notice the issue of reducing the number of Members from Scotland at Westminster and the corresponding reduction of the number of MSPs. We will almost certainly have to have a new set of Westminster constituencies so as not to reduce the number of MSPs (see Eberhard Bort's 'The Numbers Game – 129 and the Scottish Parliament: does size matter?' in **Scottish Affairs** 39). But the need to make this type of adjustment so early in the life of a devolved institution is symptomatic of the fact that, other than the issue of the Bank of England, the so-called 'constitutional' reform programme of the Labour government since 1997 has been one long catalogue of ill-considered short-term measures, every one of which has served to accumulate problems for solution at a later stage. But such solutions are not so easy to make, especially as they tend to upset nascent arrangements: it is only conceptual blindness to this fact that leads some to hope for natural development of the relationship between Holyrood and Westminster. But this kind of generally ill-considered approach to this type of reform has also to do with the fact that the meaning of constitutional reform in the United Kingdom is still very opaque: Constitution Committee of the House of Lords claims, and ill-informed analysts agree with them, that constitutional reform is a matter of public policy, something that takes place within the structure of power rather than elsewhere, for it is not about the structure of power. Reforms called 'constitutional' which are given effect within the structure of power are, properly speaking, sub-constitutional, and have to do with the processes of governance. The difference between the

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two cuts much deeper than many may think, and has enormous implications for the way reform can and should be achieved. For the proponents of the public policy view the important question is a practical one of how it ought to be done: by consensus or leadership, whereas in matters of constitutional reform – properly speaking – there is no such choice. Yet we find that, for instance, Constitution Unit would recommend reform on the basis of strong leadership, and some once promising (Scottish) academics would agree with that. But this is all very misleading: here 'consensus' refers to a comity of view amongst the political élite (even the 129 Reflection Group in Edinburgh see that: contrast paragraphs 4 and 21 of their 'The Size of Scottish Parliament: A response to the Scotland Office's Consultation Document', February 2002) whereas 'leadership' merely serves to recommend a semi-authoritarian approach on the part of those currently in power. Yet reform of fundamentals can and should only be on the basis of the consensus of the owners of the system, that is to say 'the people'.

The second part of the book (chapters 6 to 9) deals with 'the State': the balance of the argument in chapters 7, 8 and 9 is that the centre has adapted the processes of governance to the fact of devolution, but this has not required any institutional restructuring, although, pending developments in Northern Ireland and Wales, we may reasonably expect adjustments at not too distant a future, possibly involving the amalgamation of the existing territorial departments. However, this belies the actual turn of events, for there is change at the level of practice. In a way this is both a serious comment upon the nature of this very British 'system' of devolution, and the institutional flexibility and durability of the government at the centre. Along with devolution measures, formal machinery for handling centre-devolved relations was created, but it has been largely ignored in favour of informal procedures, 'concordats', and 'guidance notes'. Whether this is so because no serious conflicts of views have as yet arisen, or the informality is indicated by the British preference for political rather than 'constitutional' ways and means, is an interesting question. However, if the lack of use of the formal institutions raises the fear that when they are needed they will be found wanting because of disuse, the desire for formalised centre-devolved relations seems to derive from a misconception concerning the nature of this devolution, with much talk about its asymmetrical nature, even though no one appears willing to explain the heavenly merits of a symmetrical one. Indeed, reading this book one is constantly aware that most analysts seem to function with a less than clear idea of devolution, and that their comments seem to imply the desideratum of a 'federated' structure as the true shape of devolution

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in the United Kingdom. Clearly devolution is predicated upon the (essentially misconceived) idea of a sovereign centre: the 'Sewel Resolution' procedure, whereby the Scottish parliament adopts a Westminster Act demonstrates this well enough, as does the nature of the funding system (examined with some clarity in chapter 6) despite its discontents. Furthermore, any changes to this system, even in Scotland, will be a matter for Parliament at Westminster, even if some dream of a 'Canada Act 1982' for Scotland! To state the obvious, until it is well understood and accepted – do we know what 'the idea of devolution' is? – devolution will remain tentative and unstable. In this respect I find it somewhat surprising that no one seems to want to look at the history of the Empire, and apply the much-neglected Dominion Concept as an analytical tool to the new structure of governance in the United Kingdom.

There is too much talk about devolution as constitutional reform, or a reform with 'radical implications for the constitution'. What constitution? We have only had a re-arrangement of the structure of government, creating a new tier without disturbing that at the centre – in the languid language of Labour Government, completing the stages of accountability! But this kind of loose talk about the constitution is only one example: some are taken with 'union state' as a type – noticeably absent in the era of flourishing Welfare State – or speak of 'unwritten' nature of this constitution. These shorthand phrases are simply empty shells, boring and irrelevant.

There is a kind of political aspect to the book and this appears in the form of an inter-play between Alan Trench's Introduction and Robert Hazell's concluding remarks. Alan Trench claims that devolution has changed the political landscape but not enough to deliver what it promised, viz. a genuine and significant transfer of power. Is he confusing devolution with federalism? For him, as for Robert Hazell, devolution is unfinished business. The fact of devolution makes Hazell declare that devolution is here to stay, that it will affect political parties and institutions, and that sooner or later the landscape will be different. Indeed, devolution has already made a difference, but in what sense is it here to stay? Perhaps, like freedom, once granted it will be difficult to remove or restrict it, or, as was claimed in the debate in the House of Peers in 1996, the fact of the referendum moves devolution towards 'entrenchment'! But we must bear in mind that historically entrenchment or permanence has only meant the fossilisation of form and appearance, hiding much real change.

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For Hazell devolution is on a roll and its success a foregone conclusion, for its dynamics will propel it forward: Wales will change; and England will come to love regional assemblies, even if only as a result of the domino effect of activities in the North filtering South, for the people of England await the call of their leaders so that they, too, can speak – but he also ignores the fact that the English are wonderfully apolitical, and may they long remain so. For Hazell the advance of devolution is an inevitable one-way movement, and the endgame is the completion of the process. Of course we are left guessing what the completed system would look like, but the few pointers indicate more of the Scottish type institutions even though Scotland still has some way to go because of the expected difficulties with the funding system. However, if and when funding becomes fully a devolved matter, the system would be closer to federalism than devolution in a unitary state – when, presumably, the reform of the Scottish devolved system will also become a matter of Scottish public policy.

The problem is that this one-way attitude to devolution is not even properly Whiggish: indeed the character of this part of the book is entirely polemical and highly political, notwithstanding the status of the Constitution Unit as a non-partisan body: more than that, somehow the 'truth' – always as 'we know it' – has no part to play in it. This claim is underlined by the fact that Hazell simply ignores what is probably the most important chapter in the collection, namely John Curtice's analysis of public opinion on the subject, which has the sobering effect of the proverbial bucket of cold water! This book is probably worth reading if one begins with Curtice and reads his chapter again at the end: without putting too fine a point on it, he provokes the thought that the attitude to devolution is largely flat, especially in England and is probably also increasingly 'disappointed' in Scotland, although things are different in Wales and Northern Ireland.

We must also pay some attention to the changing status of the Constitution Unit. It is a non-partisan body, but that is only an indication of the absence of any formal and direct affiliation. However, increasingly the Constitution Unit has become an 'insider interest group': it supplies advisors to the Leader of the House of Commons, the Constitution Committee of the House of Lords, and now has the dubious honour of being one of the usual suspects to give evidence on all issues that are even remotely 'constitutional' in character. Moreover, the extent of their co-operation with this Committee on their current investigation into the working of devolution in the United Kingdom is not clear, also because its evidence was given in a private session. More than

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that, the two appear to speak in one voice, the implications of which also remain unclear. However, whereas the Constitution Unit calls for leadership rather than consensus, the Committee has remained very silent on the issue – for the issue of the future of the House of Lords is also at stake. All said and done, the real issue here is that support from a supposedly 'non-partisan' body serves to 'legitimate' a given set of views, whereas on matters of fundamental importance privileging one voice is a highly political act and a cause for serious concern. But, then, the British system has always been one of insiders talking to insiders – the voice of the people, or that of reasoned argument, is never heard.

Has devolution been an unnecessary exercise? Nationalists and political scientists share a desire for self-government, albeit for different reasons. In the end nationalists are bound to be frustrated and disappointed, while political scientists get more cases to examine! Knowing that government is no panacea, nevertheless we prefer it to be as close to the people as it is possible – besides, such governments are bound to be relatively small and less able to cause mischief, such as wars. But a political system has to be viable, capable of serving the interests of the people (wherein lies a story), and an instrument of the people such that they can change it when they need to do so (wherein lies yet another story). Is Wales really a good candidate for fully devolved government, let alone an 'independent' region within the European system? Is Scotland? There are good theoretical and practical reasons to argue for a reformed system of government for the whole of the UK – this time with a Constitution – that will probably be a better bet for all the people here. But nationalists and educated ideologues begin with other motivations, and it is futile to remind them that government is always and only a means to (policy) ends. This does not mean 'what works' is best: rather, it means that, far from adulating self-government, we must take a sober line to what government is for.

Finally, who is the intended readership of the book? Alan Trench claims two tasks for it: to bring 'what is happening' to a wider audience and place it in a broader context, and to paint a picture of the political landscape in year 2 of devolution. Frankly, the book is difficult to read: it is dotted with abbreviations and, as has been implied here, carries a heavy baggage of less than clear concepts. If the target audience is the general or even the informed public, then it should have been written differently. But is there such a target audience interested in the minutiae of devolution? On the other hand, the intended audience cannot be informed academics: they would rather deal with

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the raw material, possibly supplemented with the Monitoring Reports already mentioned. As to the shape of the political landscape: the picture presented is heavily coloured by the conceptions and the desiderata of the analysts: of course there is no neutral account, but just how much baggage is acceptable? The cognoscenti can filter some or most of it out, but not so the uninitiated. That much said; this book might yet have a didactic relevance in that parts of it can serve as a kind of textbook on aspects of 'territorial politics'. Beyond that it serves to underline the abject poverty of constitutional analysis and the lamentable lack of constitutional theory thinking that has for so long (probably since Andrew Fletcher of Saltoun) been the abiding characteristic of fragmented approaches to the study of our system of government.

May 2002