

The Labour government and devolution in 2004: An end of year (or end of second-term) report

Professor Stanley Henig
Senior Research Fellow, The Federal Trust

Introduction

There is a natural cycle to the politics and policies of any government. The first phase will demonstrate the difference between the 'old regime' and the new, 'reforming' administration; the second embodies consolidation; the third and final can be the initial verdict of self-written history – the eye to posterity. Where a government is, or even hopes to be, re-elected there may even be relatively shorter cycles within the longer over-arching cycle covering the whole history of the administration. This kind of context may not be irrelevant in any assessment of Labour's record on devolution on what most commentators consider to be the eve of the next general election.

Whether as a series of events or a continuous process, progress on devolution has been much slower during Labour's second term of office. At one level the entire programme may seem to have stalled. This largely reflects the decisive adverse vote on the issue of a directly elected assembly in the North East referendum on 4 November 2004 and the unsurprising reaction to this on the part of government ministers, political commentators and campaigners on both sides. The virtual disappearance of both government activity and policy pronouncements vis-à-vis England, apart from a few pre-election murmurs about the value of localism, can be contrasted with a major – if, so far, failed – initiative aimed at restoring the rather battered devolution arrangements to Northern Ireland.

England

Initially the government had decided to hold referendums in all three of England's Northern regions – North East, North West, Yorkshire and Humberside. The referendums were to be conducted through all-postal voting – a decision based to a large extent on higher recorded actual turnouts in areas using the system on a trial basis in local elections. It needs, though, to be noted that critics argued the government's main motivation was that such a system tended to increase turnout disproportionately amongst Labour supporters. In the event the government was knocked off course following widespread allegations of fraud during the European elections in the summer when all-postal voting was used in some regions. Interestingly, these allegations seem to have been directed at both traditional optional postal voting and at the all-postal system and, to date, none have led to any prosecutions. In a slightly curious report, the Electoral Commission suggested that there should, for the time being, be no further experimentation with all-postal voting and it should be ruled out for the proposed referendums in the North West and Yorkshire and Humberside but could be used in the North East. It was on this basis that the government decided to postpone the referendums to be held in the North West and Yorkshire and Humberside but to go ahead in the North East. Meanwhile the Electoral Commission undertook to come up with a new, so-called 'foundation model' for voting to address *inter alia* issues concerned with postal voting. At the time of writing this current report, no more details are available as to procedure or progress.

The government's confirmation that it would 'pull the plug' on two of the referendums and only go ahead in the North East was not, in retrospect, a good start for the 'Say Yes' campaign, although some supporters saw tactical advantages in holding the first referendum in the region theoretically most favourable to devolution. Such optimism turned out to be misplaced. Opinion poll evidence suggests continuous progress by the 'No' camp throughout the campaign culminating in a vote of more than 2:1 against a directly elected assembly – more or less a reverse mirror image of the original apparent lead for 'Say Yes'.

A variety of reasons can be adduced for this decisive verdict. In campaigning terms, the essential weakness of the 'Yes' campaign was the paucity of powers to be allocated to the assembly. Although the published draft legislation went slightly beyond the government's White Paper 'Your Region Your Choice', it remained easy enough for the 'No' campaign to suggest that a regional assembly would be an expensive white elephant. Some 'no' campaigners claimed that they might be supportive or less hostile if the proposed assembly had more powers. The counter-claim that devolution would be a process and that the assembly would gradually gain more powers may or may not have been believed, but it had little apparent impact on voters. In addition, though, it also needs to be recognised that, as with elections, referendums are rarely in practice fought on a single issue without any other context. Even if Labour remain overwhelming favourites to win a third term in office, the government can hardly be said to be popular at the moment – certainly not popular enough

to attract voters on what for many would always be a peripheral issue. Given that this unpopularity extends to politicians in general, the establishment of another arena for political activity was, perhaps, hardly likely to be a popular cause. 'No' campaigners were able to link this to the generalisation that a regional tier of government would mean more bureaucracy. The opposing contention that a directly elected assembly would mean democratic accountability for existing regional structures seems to have made little electoral impact.

Opinion polls prior to the campaign showed general support for devolution, but did not suggest any great salience for the issue. Earlier referendums had taken place in Scotland, Wales and London when the government was much more popular, but in each of these cases there was also strong civic commitment to the place or entity and accompanying support for the concept of self-governance. This commitment is not present to anything like the same degree in the English regions. There is also some empirical evidence to suggest that referendums as an instrument for making decisions may be weighted towards conservatism (with a small 'c'). There is data to suggest that as referendum campaigns proceed there is a tendency towards the option closest to the status quo. Finally and in the context of the actual campaign, specific issues relating to government and politicians worked in favour of the 'No' camp. The beginning of the formal campaign in the North East coincided with the umpteenth claim or revelation that government ministers had told lies over Iraq; and at the end the media were reporting adversely on MPs' expenses. The absurdity of including in "expenses" the entire cost of running an office, employing secretaries and research assistants was rarely apparent in media reporting.

The likely upshot is that there will be no further referendums in English regions in the foreseeable future. Some have pointed to the long gap between the first referendums on Scottish and Welsh devolution in the 1970s and implementation some twenty years later. Drawing the obvious implications may be fantasy, albeit matched on the other side of the campaign by suggestions that the time has now come to wind up even the existing part indirectly elected and part appointed regional assemblies. Some Conservatives (with a big 'C' this time) even seemed to have forgotten who had actually established the regional offices of government. Regional devolution in England is unlikely to be on the agenda whoever wins the next election; but regions as such will continue to play a role – albeit relatively minor – in the wider machinery of governance.

Wales

As Labour's second term draws to a close, it is Wales rather than the English regions which ought to be attracting the greater attention. Welsh devolution can to date be considered a relative success story despite the narrowness of the original referendum vote and the slightly bizarre arrangements for transferring powers. The powers devolved to the Welsh assembly were executive rather than legislative and were set out point by point rather than in general categories. The real curiosity is that executive powers were devolved to an assembly, NOT to anything remotely resembling an executive authority. The obvious pattern or model would seem to be local authorities prior to the introduction by the Labour government of directly elected mayors and/or cabinets. For all but the smallest local authorities, the concept of government

by and through committee was repudiated; for Wales it was re-introduced at national level. In fact the devolved authority soon determined to ignore the model it had been bequeathed, by establishing what was in effect a Welsh government or executive responsible to the Assembly. It could not, however, do anything about the absence of primary legislative powers. This was the background to the Assembly's decision in June 2002 to establish the Richard Commission to consider issues relating to its powers and also its mode of election.

The subsequent report published just under two years later may well be the most comprehensive of its kind ever undertaken. Its chief proposals were to accept and reinforce a clear separation between legislature and government; to devolve primary legislative powers along the lines of those granted to the Scottish Parliament; to increase the size of the Assembly from 60 to 80 members; to change the electoral system from a mixture of first past the post and additional members to one in which all would be elected through single transferable vote. It is probably fair to say that this report was not exactly received with acclaim by the government at Westminster. There has in fact been no formal response. Instead the Welsh Labour Party produced a brief and rather unexciting policy document under the names of the Chair of the Welsh Labour Party (Stella Matthews), the Welsh First Minister (Rhodri Morgan) and the Secretary of State (Peter Hain). Clearly the main object was to paper over any differences and take the Party and Government safely through the election.

Formally the policy document committed a re-elected Labour government to a limited reform programme. Post the election there would be further moves towards a clear separation between Assembly and Government; the Assembly would in a variety of ways be granted enhanced legislative powers. Without primary legislative power, it would clearly have no need for any increase in membership and the electoral system would remain unchanged. There was one other unmentioned consequence, possibly welcomed in some quarters: there would be no requirement for any reduction in the numbers of Welsh MPs at Westminster along the lines of the Scottish precedent. The rather pompous coda to the effect that these proposals "represent stages in the development of a devolution process which began 40 years ago with the establishment of the Welsh Office under Harold Wilson's Labour government" reinforces the notion of devolution as a process and might even conceivably give some heart to proponents of regional devolution in England! On the other hand the Welsh Assembly may not want to wait another 40 years for implementation of the major proposals in the Richard report. A lot may depend on the ongoing dynamics of relations between some of the main players.

Local government

Nonetheless, looking beyond the forthcoming general election, it seems unlikely that further developments in the devolution process will be given much priority apart from the rather special case of Northern Ireland (see below). A re-elected Labour government will have neither mandate nor inclination to revisit English regional devolution, whilst the commitment regarding Wales is likely in the first instance to produce little more than a tidying up process. There are suggestions that the

Labour manifesto may contain proposals for further reform of local government. Whilst the Boundary Commission was looking at possible boundaries for new unitary authorities to operate within English regions opting for devolution, there was some suggestion that the Labour manifesto might include proposals for completing the abolition of two-tier local structures. Given that devolution in England is going to be on the back-burner for some considerable time, there may be less immediate urgency in returning to what is both a long-standing Labour policy and a political 'hot potato'.

It should be recalled that back in the 1970s the Heath government established a uniform pattern of two-tier local authorities across England, Scotland and Wales. Subsequent Conservative governments swept away the upper tier in the case of the largest Metropolitan areas, introduced new unitary authorities in Scotland and Wales and then established the Banham Commission to complete the process in England. Part way through the process – no doubt influenced by the uproar in the shire counties – Banham effectively reversed track. A considerable number of new unitary authorities were created, but the process was not completed. Post 1997, the incoming Labour government drew a wide birth round the subject. There were strong pragmatic reasons for simply setting aside long-standing policy: the priority was to alter the way local authorities operated and, hopefully, to pave the way for the directly elected mayor, but the government was also influenced by the fact that many county authorities were then under Labour control. Given the tendency for government parties to do relatively badly in local elections, this latter consideration is likely to be of ever less importance. So it is conceivable that a third term Labour government could turn to what can be considered uncompleted business. It is, though, perhaps rather more likely that it will try to extend the number of directly elected mayors, especially in the larger cities. In the absence of devolution to the English regions there may be a revival of the somewhat nebulous concept of city regions.

Another equally nebulous concept is 'localism'. Aided and abetted by some sections of the press, all parties seem to be paying lip service to the idea of giving more autonomy to local government, local people and communities. There is some suggestion that any restructuring of local government in the English shire countries to produce a uniform system of large unitary authorities could be accompanied by extensions to the number and powers of parish and town councils or their equivalent. No clear cut proposals have emerged to date and, in practice, are likely to be inhibited by the unwillingness of central government as such to concede any significant financial autonomy.

Northern Ireland

In reality none of the above is likely to have much political salience. However, there is one other piece of uncompleted business and this will have a much higher priority. In its first term the Labour government was able to end the armed conflict in Northern Ireland and establish the basis for devolved institutions to run the province. However, for most of the second term the devolved institutions have not been able to operate, with direct rule having to be re-imposed in October 2002 following the effective breakdown of basic inter-community consensus. During the last part of 2004 major efforts were made by both the British and Irish government

to find a basis for ending that direct rule. This could only be achievable through some kind of *modus vivendi* between the two parties which had emerged as 'winners' of the 2003 elections in Northern Ireland – the Democratic Unionists and Sinn Féin. Early in December 2004 the British and Irish governments issued a joint statement containing their proposals for a comprehensive agreement. An appended timetable suggested that the process of implementation would be triggered by confirmation of their agreement from the DUP and Sinn Féin; subsequent stages would bring about a return within months to a new pattern of devolved government. Changes would be made to enhance collective responsibility and accountability and there would be the promise of devolution for policing and justice. In addition the British government would introduce legislation to abolish the power of suspension. The latter could be construed as a gesture of intent that Northern Ireland should at last take full responsibility within a UK context for its own affairs: in reality it hardly altered what would have to happen if at any time in the future the new *modus vivendi* between the communities were to vanish.

Thus far, but in practice it went no further. Sinn Féin could confirm agreement; the DUP would not. The crucial area for disagreement, as so often before, related to decommissioning of weapons. The complex inter-play between Sinn Féin and the IRA signified commitment that weapons would indeed be 'put beyond use' and that this would be independently verified. However, the DUP further insisted that the process should be photographed: it was, at least theoretically, disagreement on this one specific point which prevented agreement. Without intruding into the merits or otherwise of the DUP's position, it has to be noted that the existence of photographs would in itself give no additional 'proof' of decommissioning to that available from independent verification. The sad reality is that there is still not the required degree of trust between the two communities – or at any rate between their leading political representatives – to allow effective devolved government to operate. It may ultimately be back to the drawing board!

Conclusion and Outlook

Until the next general election actually takes place, only an interim assessment is possible of the Labour government's performance during its second term of office. However, it is hard to resist the conclusion that devolution has been given relatively little priority during that period and that this is reflected in the general lack of progress. On the positive side the new institutions in London, Scotland and Wales have bedded down, are broadly accepted and are working relatively satisfactorily. There are now very few voices wanting to reverse the process and some pressure from Wales for an extension of powers. Ending armed conflict in Northern Ireland was one of the major successes of the Labour government during its first term, but, in the absence of a basis of trust between the two communities, devolution as such has simply not been working. This would seem certain to be a priority for a Labour government if it wins a third term.

In 1997 Labour's modernising agenda suggested that it would give high priority to both devolution and to constitutional reform. Both these areas of modernisation are relevant to federal thinking, which does not only relate to vertical structures linking different tiers of government, but is also concerned with horizontal relations between executive, legislature and judiciary. The government's spotlight has focused particularly on two potential areas for

constitutional reform – the composition and powers of the second (or upper) legislative chamber and the possibilities for disentangling the judiciary from executive and legislature. Despite the severe reduction in the number of hereditary peers entitled to sit in the upper House, the nature of its membership has not really changed. It is composed of the ‘great and the good’ albeit now mostly appointed for their own achievements rather than those of their ancestors: members are neither elected nor accountable. However, there seems to be little basis for agreement even in the government itself as to how the process of reform should be continued.*

With regard to the judiciary, the government has clearly signified its intent to move towards the equivalent of a supreme court. No real progress has been made and there is little evidence of detailed thinking as to the implications for our system of governance as a whole.

Tony Blair has now publicly stated that whatever the result of the forthcoming general election, he would not be leading Labour into a fourth election. For the Prime Minister, then, the overall cycle alluded to in the first paragraph of this paper would enter a final phase after the next election. From a federal perspective there is much still to be done if what used to be called ‘new’ Labour wishes to go down in history as having substantially modernised and changed our constitutional structure.

* The Federal Trust Paper *Reforming the House of Lords – a federal perspective* assesses the very limited progress made in regard to reform of the House of Lords. It can be accessed at <http://www.fedtrust.co.uk/houseoflords>