

PRESENTATION TO WELSH ASSEMBLY CULTURE, WELSH LANGUAGE
AND COMMUNICATION COMMITTEE. 19.3.20

Introduction

I would like to begin by saying how sorry I am not to be here in person as I have always enjoyed my trips to Wales. I had a very happy five year spell as external examiner on the MA in Comparative Journalism at Swansea University a few years ago. And in two of the books I recently co-edited there were excellent contributions by Welsh academics on the press in Wales and on how the Welsh media dealt with the 2014 Scottish independence referendum.¹

My starting point today are some basic statistics, on population and the political balance in the devolved parliaments.

Scotland	5.4m	SNP minority government
Wales	3.1m	Labour led
N. Ireland	1.9m	Power sharing

So there are clearly population imbalances and marked contrasts politically, with power sharing in Northern Ireland because of its particular history, a Labour-led government in Wales, and in Scotland an SNP minority government. The *raison d'être* of the SNP remains the establishment of an independent Scotland; that may be the desire of Plaid Cymru too but it does not at the moment occupy the position in Wales which the SNP has in Scotland, while at Stormont there is a huge gulf between the two power sharing parties on the issue of the desirability of a united Ireland.

Because the current Westminster government is a Conservative majority one there is no political alignment at present between it and any of the devolved

Cynulliad Cenedlaethol Cymru / National Assembly for Wales
Pwyllgor Diwylliant, y Gymraeg a Chyfathrebu / Culture, Welsh Language and Communications
Committee
Datganoli Darlledu / Devolution of Broadcasting
CWLC DoB25
Ymateb gan Unigolyn / Response from an Individual

governments.

That can make for tensions and policy disagreements, some of which might be relatively short term like, for example, the initially differing proposals for the self- isolation of the elderly in England and Scotland in response to the spread of the Corona virus, and others which are more long-term, like the oversight of broadcasting.

Constitutionally, the UK now operates under what might be called 'asymmetrical quasi federalism'. It's an awkward phrase but it does describe where we are, in that there has been significant devolution to the three national assemblies, although that devolution of powers is not uniform, so therefore can be described as asymmetrical; there is no English parliament, but Westminster does at times behave as if it were an English parliament, for example, when dealing with criminal justice. But to date, although the SNP, for one, has sometimes declined to vote at Westminster on what it considers to be exclusively English matters, there has been no attempt to reconstruct the UK government so that it is both just that, and on occasion also an English government. But that is what it now is, and in this sense we have quasi-federalism in Britain

When Ron Davies described devolution as 'a process, not an event', he was actually talking about the UK as a whole, whether deliberately or not.²

This is the context in which broadcasting and devolution need to be discussed, and it may well be the case that the issue cannot be properly resolved until the constitutional arrangements of the UK evolve further.

Broadcasting Background

In any discussion of this sort we need to take account of the current difficulties faced by the traditional PSB broadcasters, UK wide and in the nations.

Ofcom's recent report, 'Small Screen: Big Debate' ³ presents us with some stark facts -

Net advertising revenue has declined for the PSB channels in the period 2014-18 by 3.8% per year.

Net BBC revenue over the same period has declined by 4% per year.

In the case of ITV, Channel 4, and Channel 5, the decline is due to the competition for advertising revenue from other commercial operators and from the online world. In the case of the BBC the driving factor has been the imposition on the Corporation by George Osborne, when Chancellor of the Exchequer, of responsibilities for various broadcast undertakings previously financed in other ways, such as S4C and the World Service, and the decision to ask the Corporation to fund free television licences for over 75s, or those members of that group which the BBC feels it can afford to exempt from the licence fee (the truth is that it cannot afford to exempt any of them).

Despite their financial difficulties, and the fact that they are operating in a much tougher environment than is to be found anywhere else in Europe, the PSB channels do still manage 57% of viewing in Scotland and in Wales. That is a significant achievement.

But costs, particularly for high-end drama continue to rise, not least because of the competition in this area from companies such as Netflix.

As far as radio is concerned, in a highly competitive environment the BBC services still manage to account for around 50% of all UK listening.

I referred earlier to the current constitutional situation as quasi-federalism. The same might be said of the accountability mechanisms faced by broadcasters, and the super-regulator, Ofcom.

But it also needs to be noted that pre-dating the establishment of the Welsh and Scottish parliaments there has been devolution of some expenditure related to broadcasting, since any support offered to film makers almost inevitably has meant in practice support for broadcast drama, something which is now explicit in the activities of Northern Ireland Screen, the Senedd's Media Investment Budget and Screen Scotland (located within Creative Scotland). All provide funding for projects which are aimed at the small screen, or appear there eventually.

The figures look something like this.

Grant expenditure on film and TV from public sources

Scotland	£14m	+ Alba (c£20m, BBCSc £30m)
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Wales	£30m	+ S4C (£100m +)
N. Ireland	£18m	

These figures suggest that Wales is ahead of Scotland by a significant amount. Regardless of the actual figures, it is clear that all of the devolved governments have been spending money on projects which are aimed at broadcasting. Of course there is at the moment a contrast between how BBC Alba and S4C are financed, with the former now deriving most of its funds directly from Holyrood while S4C, having been financed by the UK government, is now moving to being funded from the licence fee, as has been the case with the recently established BBC Scotland channel from its inception.

There has been a long running discussion in Scotland regarding the percentage of the licence fee spent north of the border. According to a recent report commissioned from Creative Scotland by the Scottish government ⁴ the relevant figures are these -

Scotland	55%	+ Alba (c£20m, BBCSc £30m)
Wales	95%	+ S4C
N. Ireland	75%	

(Figures on left from report of Screen Sector Leadership Group Scotland, 2017; I have added the right hand column's figures)

This leads us into quite a complicated discussion. It can be argued, for example, that locating the production *Dr Who* and *Casualty* in Wales, although it ups the licence fee spend in Wales and provides work for Welsh personnel, does not significantly augment the Welsh presence on Welsh and UK screens. In Scotland the fact that *Question Time* is now supposedly based north of the border does not really do much to address the issue of the licence fee spend either. However any thorough examination of this issue needs not only figures like those set out above but also realistic costs for the provision to the three nations of the BBC's national UK services, such as BBC1's non opt-out programming and Radio 4.

Devolving Broadcasting

Both Holyrood and the Welsh Assembly have taken definite interest in broadcasting, whether it is formally devolved or not. The establishment of this committee's inquiry makes that very clear. And in 2007 the SNP minority government set up a Broadcasting Commission, the final report of which recommended the establishment of a new non-BBC channel at a cost of up to £70m per year.⁵ All the Holyrood parties supported this idea but no cash was offered directly or indirectly by the Assembly. An arm's length fund on the model of Telefilm Canada might have been one option but instead other sources were suggested, including the BBC licence fee, but no progress was made at that juncture. It can be argued that the new BBC Scotland channel, which went on air in February 2019, is a cut down version of what the Commission suggested and of course, like BBC Alba, it is firmly within the Corporation's ambit; that is not what the Broadcasting Commission proposed.

Quasi-federalism is now reflected in how the BBC presents its annual reports and accounts as laid out in the current charter ⁶ -

37. Annual report....

5) The BBC must send the annual report, as soon as possible and in any event no later than seven months after the end of the period to which it relates, to the Secretary of State, and on the same day to the Scottish Ministers, the Welsh Ministers, the Northern Ireland Ministers and Ofcom.

(6) The Secretary of State must then lay the annual report before the United Kingdom Parliament. When this has been done, the BBC must publish the report.

(7) The BBC must lay the annual report before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly respectively on the same day as, or as soon as possible after, it has been laid before the United Kingdom Parliament.

39. Audit of the BBC...

(3) The Secretary of State must lay the group accounts and the report of the Comptroller and Auditor General before Parliament. When this has been done, the BBC must publish the group accounts and the report.

(4) The BBC must lay the group accounts and the report of the Comptroller and

Auditor General before the Scottish Parliament, the National Assembly for Wales

and the Northern Ireland Assembly respectively on the same day as, or as soon as possible after, those documents have been laid before the United Kingdom Parliament.

The Corporation must respond to requests to appear before the Assemblies.

42. Appearing before the devolved assemblies

(1) The BBC must comply with a request of a devolved assembly or a committee of a devolved assembly—

(a) to attend its proceedings for the purpose of giving evidence; and

(b) to submit reports,

(in the same way that it must comply with a request of either House of Parliament or

one of their committees) concerning matters relating to the nation to which the assembly relates.

(2) For the purposes of this article, “devolved assembly” means the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

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And when it comes to Charter Review -

59. Charter Review

(3) The Secretary of State must consult the Scottish Ministers, the Welsh Ministers and the Northern Ireland Ministers—

(a) on the draft terms of reference for the review of the Charter in advance of their publication;

(b) through the process of reviewing the Charter; and

(c) before making a recommendation to grant a further charter.

(4) The Secretary of State must lay the final terms of reference for the review before Parliament. The Secretary of State must send the final terms of reference to the Scottish Ministers, the Welsh Ministers and the Northern Ireland Ministers who must then lay them before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly respectively.

(5) The Secretary of State must consult— (a) the public;

(b) the BBC;

(c) Ofcom; and

(d) any person the Secretary of State considers appropriate.

(6) A draft of the proposed charter and framework agreement must have been laid before Parliament and debated by each House.

(7) A draft of the proposed charter and framework agreement must have been laid before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly and debated by each of those assemblies if the assembly deems it appropriate.

(8) The BBC must co-operate with the Secretary of State, and provide the Secretary of State with such information and other assistance as the Secretary of State may reasonably require from the BBC, in connection with the review.

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It is now also the case that the appointment of the members of the BBC Board who represent the two nations, and of the corresponding Ofcom members, requires the agreement of Scottish/Welsh ministers. Presumably the same will apply to the representatives from Northern Ireland now that Stormont is functioning again.

As is stated in the organisation's most recent annual report, 'Ofcom's Annual Report and Accounts is sent to the DCMS, which lays copies of it before both Houses of Parliament and in Scotland, Wales and Northern Ireland.'⁷ Furthermore, 'Our offices in each of the UK's nations allow us to engage directly with governments, elected representatives and local stakeholders.'⁸ And Ofcom has similar duties to those set out for the BBC when it comes to appearing before committees of the devolved governments.

However there have been no replacements for the BBC's Audience Councils, which had in turn replaced National Broadcasting Councils in 2007. This is a bit of a mystery. After all, our super regulator, Ofcom, has advisory committees for each nation. Though it might be argued that since Ofcom now regulates the BBC to a significant degree, Audience Councils advising the BBC are not necessary.

Instead of Audience Councils we have sub-committees of the BBC Board, with no non-BBC representation on them. It really is quite strange that as political devolution has proceeded apace, the BBC has gone in the opposite direction. I spent a number of years on the selection panel which recommended members for the then Broadcasting Council for Scotland to the Board of Governors in London. As member, and latterly chair, of this panel I was conscious that we were looking for people of some standing who would be critical friends of BBC Scotland, willing to advise, argue and, where necessary, defend, not least in debates with the Corporation's London

management. Senior executives, in my experience, derived much useful input and support from this body. I am sure this was also the case in Wales and

Northern Ireland. Why the abolition of the successor bodies to the Broadcasting Councils, the Audience Councils, has not provoked a political backlash, given that it is completely contrary to the spirit of devolution, has greatly puzzled me.

There is another difficult issue which needs to be explored. Supposing all the presentations, consultations and discussions laid down in the current charter and engaged in by Ofcom take place, but the BBC or Ofcom at UK level and/or the Westminster government find themselves at loggerheads with one of the devolved governments on a particular issue, what mechanisms exist to arbitrate between the two positions? Will the view of the centre always prevail? It would seem that the establishment of an arbitration system is necessary.

As mentioned above, there are Ofcom advisory committees for each of the four nations. And the devolved assemblies nominate lead members to these bodies.

Yet the UK government continues to insist that broadcasting remains reserved. What all of the foregoing suggests however is that, while we certainly do have creeping devolution, the centralisation reflex has not disappeared.

Moving On

If this discussion were just about money, Wales appears to be doing rather well, Scotland much less so.

However it might not be just a matter of money but of the age old problem of the relationship between centre and peripheries?

Even if the nations were showered with more cash - highly unlikely, given what has happened to the licence fee and the pressures on the other PSB organisations - it is doubtful if that would get over the problem of reconciling the metropolitan mind set and national aspirations.

That disjunction manifests itself in matters like the 10 pm UK news bulletins' agendas, and presentation. How often in the last week or so has the BBC 10pm news led with pronouncements regarding the Corona virus which are presented as if the remit of the UK health minister extended to all of the

nations of the UK? That perception has only been contradicted when -

occasionally - we have been told in these bulletins about what the health ministers in Cardiff, Edinburgh and Belfast have said about the approaches which are being taken in their parts of the UK.

Looking back on the whole devolution process, it can be argued that the BBC in particular could have got ahead of the game by reinventing itself as a genuinely federated organisation - although it would have had to find a way of dealing with the 'England problem', when it had yet to be addressed properly at Westminster. Admittedly, that would have been a politically tricky course of action for the Corporation.

Genuine devolution of broadcasting would involve both finance and accountability.

So the Welsh, Scottish, and Northern Ireland governments would be dealing directly with broadcasters, and with regulatory frameworks as independent 'actors'.

That might be easier with the BBC but what about the other PSB national channels, not one of which is federal (although ITV used to be)?

And what about the super regulator Ofcom, whose remit appears to be in a state of constant expansion, would it have to be federated too?

None of that is impossible but it would be complicated.

In the written evidence to your committee I've noted the opposition to devolution of broadcasting from Welsh commercial radio, opposition which is focused on the 'burden of compliance', and from Equity in Wales. But I have been struck by the keenness of the NUJ, which wants S4C to be overseen by the Welsh Assembly, and even envisages a new Welsh broadcaster superceding the BBC.

There is a rather important issue which needs to be addressed in the devolution discussion, and that is the power of the national UK broadcasters to resist political pressure from those who may not wish them well. Would it be easier to pressurise federated bodies and a much weakened hub - if there still was a hub at the centre? What is the critical mass needed at the centre to ensure such political pressure can be effectively resisted? How might that mass be maintained while at the same time moves were made towards a

genuine federation?

And we need to constantly remember the competitive pressures PSBs now face not only from Netflix and the other online providers, but also the serious problem of the loss of younger audiences. We also need to be mindful of the unending pressures on the licence fee generated by the Westminster government, the latest example being the suggestion that licence fee evasion should be decriminalised. And we need to remember too the pressures on advertising revenue from cyberspace.

Personally I can see the case, politically and culturally, for trying to move to a federal model, but the problem of England will have to be addressed - should Northumbria, Wessex, and Mercia be resurrected?

And certainly in Germany, ARD is organised on a regional (Länder) basis but then so is the country. And there can be political pressure on the broadcasters at the Länder level.

Would a federated broadcasting system stick with the licence fee or go for direct government grant (on the BBC Alba model) - or subscription?

Norway has just moved to an income tax charge, and Sweden to a public service tax. There are voices within the BBC who are conceding that there may have to be some modification of the licence fee system, even though it is a relatively simple way of acquiring the necessary revenue, and avoids the dangers which might arise if it were replaced by an annually agreed - and argued about - government grant, such as partially finances CBC in Canada.

So what I am arguing is that devolution - or rather further devolution - of the responsibility for broadcasting is perfectly possible, but it would not be a straightforward matter, and, as I have said - perhaps said too often in this paper! - to work properly it might well need to be accompanied by substantial change in the constitutional arrangements of the United Kingdom.

I hope I have addressed at least some of the issues the committee wishes to explore in the foregoing and will now move to respond directly to the questions sent to me by your researcher.

What should the future look like?

1. It is widely accepted that there is a shortage of media content

providing Welsh news and showing Welsh life. To what extent could devolution help improve this situation?

2. Would you support proposals to devolve broadcasting to Scotland? To what extent is the situation comparable in Wales?
3. If partial devolution is desirable, in what areas would this be?
4. Would you support a federalised model of broadcasting, whereby Devolved Ministers have a direct say in matters such as setting the licence fee and setting Ofcom's regulatory requirements for the BBC in individual nations?
5. Are there any international models that demonstrate what constitutional arrangement for broadcasting would be best for Scotland/Wales?

I accept the point about lack of material focused on Welsh news and life, which is linked to the daily press situation in the country. There is a case for further devolution of broadcasting power, including the power to decide the level of the licence fee and the funding for S4C, but it would still be necessary to face the fact that, as there would have to be payment to the UK BBC for common services, then the licence fee in Wales - as in Scotland - might have to be significantly higher than it currently is.

Regulatory divergence

5. How regulatory divergence between Wales/Scotland and the rest of the UK – in the event of devolution – would impact on the activities of broadcasters and producers.
 - What impact would this have on the profitability of commercial broadcasters?
6. The extent to which issues facing broadcasters are global (e.g. the rise of global streaming companies).
 - What tier of governance (e.g. Welsh/Scottish, UK or EU) is best-suited to respond to these challenges?
7. To what extent do viewers in Scotland and Wales currently benefit from content broadcast to a UK-wide audience.
 - Could this be maintained in a devolved future? (would this require audiences in Scotland/Wales to contribute to the UK licence fee?)
8. Welsh and Scottish content is currently broadcast on UK networks by UK broadcasters who are active in these nations.

Would this be maintained in the event of the devolution of
broadcasting?

9. What are the impacts on transmission of a Wales/Scotland-only approach to managing spectrum? (i.e. the different frequencies of airwaves over which content is transmitted).

One has to be wary of special pleading but the profitability of commercial broadcasters is not what it was. I have already argued that competition from global streaming companies is a serious challenge to UK PSBs, and it is perfectly reasonable to suggest that any further broadcasting devolution within the UK would have to take account of any damage that might be caused to the existing PSBs. On the other hand, some observers might take the view that would be a risk worth running. In Scotland some members and supporters of the SNP, confronted with the argument that an independent Scotland might be poorer, argue back that would be a price well worth paying on order to achieve independence.

My personal preference might be for a genuine federated model for the BBC but I wouldn't wish to argue that the other PSBs should be so restructured, even though regulation of their activities might become much more substantially devolved than is currently the case.

I have argued above that the cost of UK wide services to Wales and Scotland might lead to a differential licence fee. It would make sense for broadcast production to remain dispersed - to the limited extent that it is - not least because of current political thinking at Westminster and elsewhere about those parts of the UK which have been 'left behind', and also for economic reasons.

Spectrum management would seem to be a matter best dealt with on a coordinated UK basis, rather than being devolved.

Funding

10. What constitutional arrangement (e.g. devolved or non-devolved) can provide the maximum amount of funding for public service broadcasting in Wales/Scotland?
11. Cymdeithas has called for a "tech tax" on multinational companies such as Google and Facebook, with this income spent on media content for Welsh audiences. Do you support this call?
12. Would you support devolution of broadcasting if it led to a reduced budget for broadcasting in Wales/Scotland? (Wales is currently a net beneficiary

of licence fee spending)

13. Should the Devolved Nations have a greater say in how funding for public service broadcasting is decided? If so, what should this look like?

As I argue above, the response of the Scottish parliament to the 2007 Broadcasting Commission Report, when no viable funding solution was suggested, was not inspiring. If the Scottish, Irish or Welsh Assemblies wish to enhance broadcasting within their nations, then they really have to face up to the fact that they may have to find the cash themselves. To be fair, this has been happening to an extent through the various support funds for film and television productions, and in the direct funding now offered by Holyrood to BBC Alba. Indirect funding is usually preferable to direct government funding in order to avoid the danger of funding decisions being linked to political pressure on broadcasters.

The case for taxing the online companies such as Facebook and Google is a very strong one, but it might be rather difficult to hypothecate some of the revenue - if we can get our hands on it! - in the way which is suggested.

David Hutchison, Honorary Professor of Media Policy, Glasgow Caledonian University.

March 2020

NOTES

¹ The Referendum and the Media: National and International Perspectives (co-edited with Neil Blain). Edinburgh Scotland's University Press, 2016.
Centres and peripheries: Metropolitan and non-Metropolitan Journalism in the Twenty First Century (co-edited with Hugh O'Donnell). Cambridge Scholars Press, 2011.

² This remark has often been attributed to Donald Dewar, inaccurately. See <https://www.publiclawtoday.co.uk/governance/314-governance-a-risk-articles/36230-devolution-is-a-process-not-an-event>

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0013/192100/psb-five-year-review.pdf

⁴ https://www.creativescotland.com/_data/assets/pdf_file/0007/38167/SSLG_Final_Report_January2017.pdf

⁵ http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/08_09_08_broacasting.pdf

⁶ <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

⁷ Ofcom 2018-19 Annual Report, p 80

⁸ op cit, p.46