

Broadcasting to reflect 'life and culture as we know it': media policy, devolution, and the case of Northern Ireland

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Abstract

The possibility that broadcasting powers could be devolved from the UK government to the Northern Ireland Assembly has been a matter for political discussion in Northern Ireland. During a 2013 debate in the Assembly on the matter, the dominant Irish nationalist political party called for such devolution to increase the levels of programming that reflect "life and culture as we know it". The subject is discussed in relation to wider debates over the devolution of broadcasting powers that have taken place in Wales and Scotland, and in relation to the challenges surrounding the formation of media policy for a divided society such as NI. This article suggests that while it is possible under current legislation to devolve broadcasting powers to Northern Ireland, it is likely that implementation would lead to major changes to public service media provision in Northern Ireland.

Keywords: Public service media; broadcasting policy; media regulation; cross-border media consumption; devolution in the UK; politics of Northern Ireland.

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While the UK currently has a national broadcasting regulatory system, with no broadcasting powers devolved to Scotland, Wales or Northern Ireland, political pressure is growing from various parts of the country to devolve broadcasting powers. This article focuses on this subject within the context of Northern Ireland (NI), and discusses the possibility that legislative powers for broadcasting could be devolved from the UK government to the Northern Ireland Assembly (NI Assembly). The current position is that broadcasting is a reserved matter (reserved to Westminster), alongside areas like financial services and pensions regulation, with the NI Assembly having no direct control over it (UK Government, 2014a). Were devolution to happen, it would make broadcasting a transferred matter (devolved), to become an area that the NI Assembly could directly legislate on, alongside areas like health, education and transport. Excepted matters, like foreign policy and currency, fall entirely outside of the remit of the NI Assembly (UK Government, 2014a). The impetus for this research comes from a November 2013 debate that took place in the NI Assembly on the matter, with a resulting vote defeated that would have allowed for the establishment of an independent panel to address the possibility of devolution.

The question of devolving broadcasting powers relates to various political questions and regulatory challenges that stem from NI's divided society, following decades of violence, and a relatively recent political consensus that is based around cross-community power sharing. These questions and challenges that are raised by this issue involve the differing interests and policy priorities of three legislative bodies – those of the UK, NI and the Republic of Ireland (ROI) – and involve various cross-border issues raised by the move from analogue to digital television broadcasting in the region. A communications policy analysis of the current regulatory structures that govern public service media (PSM) in NI is conducted, while the matter is discussed in relation to the current regulatory structures in relation to Wales and Scotland, countries within the UK where there have been similar calls for the devolution of broadcasting powers.

This article outlines the political debates surrounding this case, in the context of the UK government's view that there was no persuasive case for the devolution of broadcasting powers to NI (House of Commons, Northern Ireland Affairs Committee, 2010), and asks how the regulatory structures would change if the devolution of broadcasting powers took place. It is argued that while it would be possible under current legislation to devolve broadcasting powers to NI, it is likely that implementation would lead to major change to PSM provision in NI. The article shows that the current makeup of the NI Assembly (and the provision of a mechanism in the NI Assembly that allows contentious issues to be blocked), means that under current conditions it is unlikely that devolution would occur. That said, this issue is of current importance to media policy discussions that are ongoing in NI. While this article considers the PSM environment in NI generally, the focus is overwhelmingly on digital terrestrial television (DTT), rather than on radio or the Internet. Reasons for this relate to relative scale and funding of NI PSM in the area of DTT compared to the other two forms, and also given the focus on DTT both in policy documentation and the NI Assembly debate that is considered here. Finally, this article addresses language issues in broadcasting in relation to PSM at various points, but it is not intended to be a main focus of the article. While language is also a highly contentious issue in NI, it would require a separate article to give it the full attention it requires. Nevertheless, the issue is in places unavoidable, such as when discussing the provision of the Irish language broadcaster TG4 in NI.

Northern Ireland: broadcasting in a divided society

NI is one of four constituent countries of the UK, located in the North-Western corner of the British Isles, in the North-Eastern corner of the island of Ireland. The recent phase of the region's violent past known as the 'Troubles' lasted from the late 1960s until the later 1990s, with sporadic violence continuing on a much smaller scale. This conflict resulted in the deaths of more than 3,500 people between 1969 and the present day. The signing of the Good Friday Agreement (GFA) (Northern Ireland Office, 1998) resulted in the setting up of a power-sharing executive and a legislative assembly. Despite relative political stability, the NI Assembly was however suspended between 2002–2007. NI remains a

deeply divided society (Hamilton, Hansson, Bell and Toucas, 2008), in ways that are variously spatial (Shirlow and Murtagh, 2006), educational (Nolan, 2012) and sporting (Hassan, 2002). Central here are questions of national identity, with the NI population mainly identifying mainly as either British only (39.8 per cent) or Irish only (25.2 per cent), alongside declaring oneself as Northern Irish only (20.9 per cent) (NISRA, 2012: 15). Most cultural issues are devolved, with the NI devolved government Department of Culture, Arts and Leisure retaining control over issues relating to museums, sport, the arts and language. The absence of powers over broadcasting is very much out of keeping with the general approach to devolution in NI – although not out of keeping with the wider UK approach – whereby most contentious issues pertaining to culture are available for NI politicians to legislate on. Issues relating to marching bands, flags and insignia remain controversial within NI society.

The BBC (British Broadcasting Corporation), as the main PSM provider in NI – so named ‘The Most Contrary Region’ by Cathcart (1984) – has faced many problems during its history in the province. The BBC’s reporting of the Troubles was an issue that was inevitably going to draw criticism, whatever position the corporation took up. Taylor (1996: 67) suggests that ‘Nowhere, in the British context, has the relationship between state, broadcasting institutions and programme makers been more sensitive and uneasy than in matters concerning Northern Ireland’. In terms of representation, NI was, and remains an extremely society on which to report and reflect fairly in broadcasting, where it has been noted, ‘In an implacably divided community it was an impossible task to find acceptable symbols and images to invoke a shared sense of a common way of life’ (Scannell and Cardiff, 1991 cited in Coleman, 1998).

The BBC in NI faces a challenging broadcasting environment today, in addition to the wider changes that the BBC is facing as it approaches the review of its Royal Charter. The fact that it is entitled the ‘British’ Broadcasting Corporation, in a society where a significant percentage of the population do not identify as British is significant, with the broadcaster and commentator Mark Lawson commenting that ‘At various times in its history, it has been a piece of luck for the BBC to be generally known by its initials rather than the full trading name’ (Lawson, 2013). Problems over representation continue to this day, with the Director of BBC Northern Ireland was being questioned by members of the

NI Assembly in November 2013 on the reporting of the past and its impact on NI society (Hansard, 2013a). At the national legislative level, stringent criticism of both the government and the BBC in relation to NI came from the Northern Ireland Affairs Select Committee of the House of Commons, in a review of television broadcasting in relation to NI (House of Commons Northern Ireland Affairs Committee, 2010).

The Committee was withering in its criticisms of how NI was being treated, suggesting ‘that Northern Ireland is culturally neglected by the BBC, Channel 4 and those who commission television programmes within the UK and by those with ministerial responsibilities in the UK Government’ (House of Commons Northern Ireland Affairs Committee, 2010: 25). It went as far to say that the BBC ‘has not adequately discharged its responsibilities in Northern Ireland’ (House of Commons Northern Ireland Affairs Committee, 2010: 25). The Committee also stated: ‘We have been struck by the absence of a strong or, often, any portrayal of the ordinary life of Northern Ireland to the rest of the UK’ (House of Commons Northern Ireland Affairs Committee, 2010: 3), reflective of a time when NI was best known throughout the UK for the Troubles, the effects of which encroached on the streets of Great Britain through numerous bombings and attacks.

Regionalism and devolution in broadcasting

Regulatory powers over broadcasting have been devolved or regionalised to differing extents in various nation states, including in Germany and Canada (Nordicity, 2008: 48), and in Spain (Fernández-Quijada et al., 2013). In Germany, broadcasting was organised at the level of the German states (Länder) when following World War Two media were reorganised in Germany as a way of securing its independence from the German government. In 1950 the ARD was formed by six of the regional broadcasters (Donders, 2012: 127; Potschka, 2012: 154), which would later be comprised of all of the regional broadcasters (Donders, 2012: 130). The ARD ‘exclusively conforms with the Länder borders, although, in some instances, two or three Länder feature a combined broadcasting corporation’ (Potschka, 2012: 242). Donders (2012: 129) discusses the federalism that remains within the current system, noting that relationships between the

Länder over broadcasting regulation exist in a process of ‘cooperative federalism’, with Länder having ‘full regulatory jurisdiction over broadcasting’ (Nordicity, 2008: 49). In Spain, the autonomous communities of Catalonia and the Basque Country gained their own television systems in the early 1980s (Nordicity, 2008: 60). In Catalonia, ‘the Catalan regulator effectively regulates its own broadcasters; however, it has no control over national broadcasters which constitute 70% of Catalan television viewing’ (Nordicity, 2008: 64), somewhat undermining the efficacy of the system. Moreover, while autonomous communities in Spain have some influence over the tender process for frequency spectrum in Spain, in Spain it is central government that has control over radio, thus limiting Catalanian self-determination in this area (Fernández-Quijada et al., 2013: 26).

Regionalism and devolution in broadcasting in the UK context has been addressed by Tambini (1999), where campaigners have long called for a Scottish version of the BBC Six O’Clock news to replace of the national version (the so-called Scottish Six debate). Writing at the outset of devolution, Tambini’s (1999) argument that finding broadcasting solutions to devolution is first about finding a balance, remains extremely relevant: ‘Those involved in redesigning Britain’s media must balance the genuine need for adequate media coverage of devolved institutions with the danger of a Balkanisation of Britain’s broadcast media’ (Tambini, 1999: 151). Outlining three areas that devolution is concerned with – democratic subsidiarity (‘bringing decision-making closer to those who are affected by decisions, to encourage transparency and participation’), citizenship and governance – Tambini (1999: 151) posits that in each of these areas broadcasting is ‘key’.

Methodology

This article is a desk-based study employing a communications policy analysis approach, through the use of documentary analysis. A communications policy analysis approach to the subject is taken to show an awareness ‘of the complex forces that come into play when policies are being made’ (Hansen et al., 1998: 68), and to gain a wider understanding of the place of communication policy within the wider social, political and

economic environment. While this article analyses current policy arrangements where they pertain to broadcasting regulation in NI, the article seeks to interrogate these arrangements to determine whether the policy goals of some NI elected politicians could be achieved under the current conditions (with this focus on the ‘future’ being encompassed within the Hansen et al. (1998) approach). Archival research techniques (Atkinson and Coffey, 2004) have been used to retrieve government and regulatory body policy documents, the reports of various commissions, and legislative transcripts from Westminster and the NI Assembly. These came from official online archives and databases, and, to a lesser extent, other official sources of information found on web pages).

Comparable models: Wales and Scotland

When setting the wider political and constitutional context for a discussion on devolving broadcasting powers to NI, the closest comparisons that need to be addressed are the examples of Wales and Scotland. Like NI, these are constituent countries of the UK, each with varying levels of self-governance under the terms of devolution that occurred under the New Labour government (1997–2010) during the late 1990s. Both these countries had their devolved powers enacted on 1 July 1999, some five months before the NI Assembly (UK Parliament, 2014). Like NI, neither Scotland nor Wales has yet had broadcasting powers devolved.

In the case of Wales, the regional legislature is the National Assembly for Wales, while the Welsh Government is the executive branch. This separation of powers was established by the Government of Wales Act 2006, while a referendum in 2011 led to the Welsh Assembly gaining new law making powers in twenty areas (UK Government, 2014b). These twenty areas amount to a ‘conferred powers’ model (Commission on Devolution in Wales, no date), but while one of these areas is culture, broadcasting is an exception. The Richard Commission (established 2002) and the Silk Commission (established 2011) both addressed the issue of devolution in Wales. The Richard Commission failed to recommend the devolution of broadcasting powers (Commission

on the Powers and Electoral Arrangements of the National Assembly for Wales, 2004: 250). While the Commission did note that the Department for Culture, Media and Sport (DCMS) enabled an Ofcom presence and advisory committee in Wales, ‘the right to appoint a member of the Ofcom Board or a statutory duty on Ofcom to consult the Assembly’ (Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, 2004: 99–100) was not secured.

The Silk Commission’s second report is of particular interest to this discussion (Commission on Devolution in Wales, 2014). In its evidence gathering, the Silk Commission had found high levels of public support for the devolution of broadcasting (Commission on Devolution in Wales, 2014: 96). Though it did not recommend devolution for broadcasting, preferring instead that Wales remained with the UK framework of regulation, it made four additional recommendations on the subject. These included that a devolved body within the BBC Trust should be set up, and that the BBC Trustee for Wales should be agreed by the Wales and UK government (Commission on Devolution in Wales, 2014: 101). The major difference with PSM in Wales to the rest of the UK is the presence of a separate public service broadcaster, the Welsh-language S4C. This is in line with the much higher percentage of Welsh speakers as compared to speakers of the UK’s other smaller language groups. Significantly, the S4C has its own regulator, the S4C Authority, which operates under terms the Communications Act 2003, and some earlier acts (Communications Act, 2003, Section 204; S4C, 2012). Under the recent agreement with the BBC Trust, this authority is accountable to Parliament for the provision of S4C services, and to the BBC Trust for its expenditure of the licence fee (BBC Trust, 2013: 13).

In Scotland, the Scotland Act 1998 (UK Government, 2014c) allowed from July 1999 a separate legislature and executive, respectively the Scottish Parliament and the Scottish Government. The current position on broadcasting powers is the same as the one in NI (and similar to that in Wales, where as discussed the terminology is different): broadcasting powers are a reserved matter (Commission on Scottish Devolution, 2009: 255; Scottish Government 2009a: 7), with the main policy levers remaining under the UK regulatory framework (primarily DCMS, Ofcom and the BBC Trust). Writing before the establishment of the Scottish Parliament, Schlesinger (1998: 68), presciently suggested

‘pressure for a more or less radical shift of powers to Edinburgh is bound to continue’, despite the national broadcasters at the time having resisted change.

In 2007, Scotland’s First Minister Alex Salmond announced the setting up of the Scottish Broadcasting Commission (SBC). The commission made a number of recommendations, the chief of which was the proposal for a new ‘Scottish digital television network’ (Scottish Broadcasting Commission, 2008: 3), which never came to fruition. Of particular interest here, the Commission did not call for the devolution of broadcasting powers (with the proviso that it ‘does not mean that this option should be wholly discounted’ (Scottish Broadcasting Commission, 2008: 53)). Instead, the Commission recommended, ‘that Scottish Ministers should have greater responsibility, within the UK framework, for those operational functions of broadcasting directly affecting Scotland’ (Scottish Broadcasting Commission, 2008: 53).

Shortly after the SBC was set up, the Commission on Scottish Devolution (known as the Calman Commission) carried out an exercise to assess the Scotland Act 1998. Rather than addressing broadcasting in much detail, the Calman Commission took the view that it had not heard evidence that contradicted the SBC’s recommendations on an increased role for Scotland within the UK-wide system of regulation (Commission on Scottish Devolution, 2009: 170). Later, Opportunities for Broadcasting (Scottish Government, 2009b) endorsed the Calman proposal that the appointment of the Scottish member of the BBC Trust be a decision taken in Edinburgh, rather than Westminster. Finally, voters in Scotland took part in the independence referendum on 18 September 2014, rejecting the option which would have taken Scotland out of the UK, and led to the establishment of a new nation-state. Prior to the referendum, voters in Scotland had been told that independence would have led to the creation of a Scottish Broadcasting Service (SBS) that would have begun on 31 December 2016 (Scottish Government, 2013). It was proposed that this would have been a full public service broadcaster, having inherited its share of the BBC’s financial, physical, and personnel assets (including those commercial assets such as BBC Worldwide). While independence was rejected, a process has now been set in motion to increase devolution to Scotland, being addressed by the Smith. The Scottish Government’s submission to the commission called for the devolution of broadcasting to ‘provide the leverage needed to enhance job creation through increased

production; contribute to a fairer society through programming aimed at promoting wider access to culture; and enable Scotland to better express its place in the world' (Scottish Government, 2014: 21).

Regulation of public service media in Northern Ireland

The regulatory framework for broadcasting in NI is broadly similar to that of Wales and Scotland. Under the terms of devolution to NI from Westminster from 1998 onwards, broadcasting is a 'reserved matter' (UK Government, 2014a). Almost all media policy relating to NI remains under the scrutiny of UK national bodies such as the Department of Culture, Media and Sport (DCMS) and Ofcom in the UK. Of recent note, Ofcom reissued the licence for the Channel 3 licensee in NI, UTV (formerly Ulster Television) (Ofcom, 2014a), having turned down a UTV proposal that would have allowed it to lessen its commitment to the production of local content outside of news (Ofcom, 2013a). Ofcom notes that it works with government in NI, and on 'border issues' with ComReg (the ROI Commission for Communications Regulation) and the Broadcasting Authority of Ireland (Ofcom, no date: 12). In line with England, Scotland and Wales, the Ofcom Advisory Committee for Northern Ireland, chaired by Professor Maureen Edmondson, advises on all of the Ofcom areas of responsibility. With special reference to broadcasting, NI also has a representative on the Ofcom Content Board, one of plethora of committees and boards that Ofcom has advising it (Andrew Colman is the current member for NI) (Ofcom, 2014a). The BBC Trust plays its role in NI in the same way as in Wales and Scotland, and regulates both the national and the local services of the BBC operating in NI. Primarily, the BBC Trustee for NI, Aideen McGinley (BBC Trust, 2012), has a full seat on the BBC Trust alongside Trustees for the other countries. The Trustee also chairs the BBC Audience Council Northern Ireland, playing its role of scrutinising BBC services in NI.

Challenges posed by the Irish border

The border between NI and the ROI is the UK's only land border, partitioning the six counties of NI from the 26 of the ROI, although the border is today largely inconspicuous. NI was the last region in the UK to have its analogue television signals switched off in 2012 in the move to DTT, gaining a place in broadcasting history (BBC News, 2012). Prior to digital switchover, audiences across the island of Ireland had been able to (depending on location and signal strength etc.) access television from the opposite jurisdiction to the one they resided in (Ofcom, 2013c). In his extensive account of how ROI television services eventually became available in NI, Ivory (2014) outlines how this had long been a policy goal for numerous ROI governments over a period of some fifty years.

Exploration for formal access for NI audiences to the Irish language television channel TG4 (previously entitled Teilifis na Gaeilige, and headquartered in the ROI), was agreed in the 1998 GFA and was reiterated in the April 2003 *Joint Declaration by the British and Irish Governments* (UK Government and Irish Government, 2003: 9). Resulting action led to analogue broadcasting from Belfast in NI before digital switchover (DCMS, 2009: EV 93), and a commitment from the UK government moved to ensure that TG4 would be available on Freeview (the UK's main DTT platform) in NI (DCMS, 2009: EV: 93). In October 2012 a new venture between RTÉ (the Irish public broadcaster) and TG4 started broadcasting in NI, enabling audiences through Freeview HD, to watch the ROI channels RTÉ 1 and RTÉ 2 in NI, alongside the previous commitment to screen TG4 (DCMS, 2012). The channels are also available through spillover access from Saorview (the ROI's main DTT platform) (Ofcom, 2013c). Under the arrangements described here, having RTÉ services formally made available in NI has been reciprocated by significant audience demand. The percentage of the television owning population in NI who watch RTÉ 1 and 2 monthly are 41 and 38 per cent respectively (with 31 per cent watching RTÉ 1 on a daily basis) (Ofcom, 2013b: 45). TG4, the channel originally agreed by the GFA, is watched by 18 per cent of people who receive the channel, while TV3, an Irish channel that is only accessible in NI through

DTT overspill from the ROI's platform (Ofcom, 2013b: 44), is watched by 19 per cent of the television owning population.

Whether audiences in the ROI would lose access to NI television services after digital switchover was the subject of a Memorandum of Understanding (MOU) that was signed between the British and Irish governments on 1 February 2010, to allow for the broadcasting of public service television from both jurisdictions across the island of Ireland (DCMS, 2010a). That MOU was clear that 'the DTT systems in both Northern Ireland and Ireland will be the primary means of providing free-to-air public service broadcasting to the television licence holder in both jurisdictions' (DCMS, 2010a); later in the document it is explicitly stated that this would mean BBC services would be placed on the Irish DTT platform Saorview. However, in a press release dated from the day the MOU was signed, the clause that 'BBC services [would be available] in Ireland on a paid for basis' (DCMS, 2010b) was present, a clause that did not appear in the MOU. This contradictory position is clarified by Ivory (2014), whose research shows that in 2012 Cathal Goan (Director General of RTÉ between 2003 and 2011) suggested that the carrying of BBC services in the ROI would not happen 'without BBC active support and this was not forthcoming' (Goan cited in Ivory, 2014: 149), and that an Irish government minister had also confirmed in the country's legislature 'that the BBC had not expressed interest in being carried on the Irish digital terrestrial television network' (Ivory, 2014: 149).

The prevailing situation is that ROI audiences cannot access NI PSM content in ROI through Saorview, the DTT platform, while the BBC iPlayer is only available in the ROI on a paid-for basis, through the BBC Worldwide international version (BBC, 2014). BBC services, and those of other UK PSBs are available on a paid-for basis, for example on Sky Ireland or UPC Ireland, or on other satellite platforms such as the provision from *Eirsat*, which utilises the placing of BBC services on European satellite networks (Eirsat, 2014), and Freesat, the UK's satellite free-to-air service (O&O Advisory/BAI, 2013: 24). While technically free-to-air – no ongoing costs are incurred – the startup costs are considerably higher than with DTT. For example, in June 2014 Eirsat was selling a full free-to-air package with installation that would provide UK channels for €238 (Eirsat 2014). While this market provision allows for BBC services to be shown in the ROI, it

does not allow for it in the way that the original MOU suggested. Placing those services on Saorview would have been the outcome which would have best reflected this. That said, this point is somewhat negated by market provision. Ivory (2014: 146) shows that between 1984 and 2009 there has been a significant increase in ROI households with a television set having access to UK channels (for example, the rise in the audience with access to BBC One went from 52 per cent in 1984 to 84 per cent in 2009).s

Northern Ireland Assembly Debate on Devolution of Broadcasting Powers

The subject of devolving broadcasting powers to NI is a matter of recent and indeed current political debate. A motion calling for devolution of broadcasting powers was moved on 25 November 2013 in the NI Assembly, by Rosaleen McCorley MLA (Member of the Legislative Assembly), of the dominant Irish nationalist political party Sinn Féin. The original motion argued that the Minister for Culture, Arts and Leisure work with the UK government to ‘explore ... the potential’ for the devolution of broadcasting powers to NI (Hansard, 2013b: 50) (in addition to a point regarding language provision, but which is outside the terms of this article). Addressing the first clause of this motion, McCorley here suggested that broadcasting powers should become a devolved matter, suggesting that ‘The main argument ... for such a move is to create an environment in which decisions on what is broadcast are the result of a local decision-making process’ (Hansard, 2013b: 50). The MLA argued that while some programming in NI was ‘reflecting life and culture as we know it’ (Hansard, 2013b: 50), that there should be more of it. The motion was followed by an amendment, moved by the Social Democratic and Labour Party (SDLP) (NI’s second largest Irish Nationalist party) that would have entailed the setting up of an ‘independent advisory panel’ to address the issue, akin to the Silk Commission in Wales (Hansard, 2013b: 52).

Responding for the Democratic Unionist Party (DUP) (the dominant Unionist political party) was Michelle McIlveen MLA, who was then chairperson of the Committee for Culture, Arts and Leisure. Asking a series of questions about how the proposed arrangements would work, in relation to the independence of the BBC and

whether it would ‘become subject’ to the incumbent minister for Department of Culture, Arts and Leisure (DCAL), McIlveen also noted ‘that we also need to be aware that there may be implications for Ofcom as a UK body’ (Hansard, 2013b: 54). The final speaker with most relevance to this discussion was Carál Ní Chuilín MLA, the Minister of Culture, Arts and Leisure in the NI Executive. Like her party colleague and mover of the motion, she focused early in her statement on the portrayal that NI receives on network television. In a later passage, the Minister addressed what she sees as the ‘huge accountability gap’ that follows from broadcasting being a reserved matter, the current position (Hansard, 2013b: 58).

The resulting vote on the motion and the amendment attracted a Petition of Concern (POC) tabled by the DUP, a mechanism that exists in the legislative assembly due to the consociational nature of the legislature (McGarry and O’Leary, 2006) given the political past of NI. The rationale for the POC is that if a party or parties view an issue as controversial, the resulting vote on a motion may be moved away from the normal majority onto a ‘cross-community’ basis (McCaffrey and Moore, 2012: 17), a feature of the Assembly that relies on the fact that all members must identify as Nationalist, Unionist or Other (McCaffrey and Moore, 2012: 3). While the vote following the debate on the main issue of devolving powers was 56 votes to 36 votes against, the vote on an amendment was defeated 47 votes to 44. However, as only 1 out of 49 Unionists voted for the motion, the use of the POC ensured for the Unionists that this vote was not very close (as 40 per cent of Unionists voting would have had to have voted for it) (Hansard, 2013c). Despite this, there remains a strong appetite within the main Nationalist political parties in NI for devolution on an issue that would have significant ramifications for the current structures of broadcasting provision and regulation in NI.

Discussion

In the assessment of whether broadcasting powers could be devolved to NI, it must be said that within the current structures that it is possible that broadcasting powers could be devolved to NI. As the motion in the NI Assembly debate suggested, the intention was ‘to

explore with the Secretary of State the potential' (Hansard, 2013b: 50) of making broadcasting powers a transferred matter. This would have set in motion a chain of events whereby the devolution settlement would have need to be changed in legislation by the UK Parliament. The changing of the status of broadcasting powers from being a reserved matter to being a devolved matter would involve an amendment to the Northern Ireland Act 1998, such as the Northern Ireland (St Andrews Agreement) Act 2006 and Northern Ireland (Miscellaneous Provisions) Act 2014 (which amended the 1998 Act to make reducing the size of the Assembly a reserved matter). A chain of events would need to be triggered for this to happen, but this would ultimately rest on a vote in the NI Assembly on the matter receiving cross-community support. Given the DUP's use of the POC, this is for the time being very unlikely.

Had the amendment been passed, allowing for the establishment of an independent panel to address the issue, this would have brought NI into line with Wales and Scotland, in having this subject scrutinised by an independent panel. As outlined above, both Wales and Scotland have had extensive scrutiny of this issue, in Wales through the Richard and Silk commissions, and in Scotland through Calman Commission and the SBC. In each country the issue has received extensive scrutiny from independent panels, overviewing extensive amounts of evidence. The setting up of a similar panel in NI would bring it in line with the other two nations, in terms of allowing the key actors to put forward their arguments. This kind of setting would allow organisations like BBC Northern Ireland to put forward its position. Currently, its director Peter Johnston is on record to say it is 'a political matter and not a matter for the BBC. It is a matter between Westminster and Stormont' (Hansard, 2013a: 4). However, there is no suggestion that the setting up of an independent panel in NI to address the issue would result in a recommendation to devolve broadcasting. As we have seen, four commissions within the UK in the last twelve years have failed to recommend devolution of broadcasting powers to their respective countries, and thus a future recommendation from a similar panel in NI would be unprecedented.

Rather than placing too much emphasis on the possibility of broadcasting powers being devolved, or the likelihood that it may happen, the more pertinent questions are: if this took place, what would the new regulatory structures be like? What would the

implications be for PSM provision within NI. These questions will be discussed vis-à-vis current and recommended structures in Wales and Scotland, and with reference to current arrangements in NI. Here, a number of points can be made on: on the future of the BBC and the BBC Trust, representing the core of PSM within NI; and on the future of Ofcom, as communications regulator. First, NI would need to decide on the future of PSM, given that the end of broadcasting powers residing in Westminster would have massive implications for (if not the ending of) the BBC in NI. While the BBC is sustained by Royal Charter, and not directly by the UK government, it is with the government that Charter renegotiations take place and that licence fee settlements are agreed (DCMS, 2006a). Moreover, further obligations may be placed on the BBC by the DCMS (DCMS, 2006a: 49.3), and it is the Secretary of State who has powers of veto over additional BBC services that are planned (DCMS, 2006b: 16). If broadcasting powers were devolved – to DCAL for example – then the Charter and Agreement could not apply to NI as currently constituted. Unless there was a major political allowance made to accommodate a move in that direction, the BBC would thus come to an end within NI. It is currently inconceivable to suggest that there could be different BBCs, with separate agreements to different parts of the UK, not to mention the massive funding questions that this would raise.

Were it possible to make an agreement for the continuation of the BBC in NI – through some form of two-track Agreement and Royal Charter – the question of how the BBC would be regulated would arise. As discussed above, the BBC Trust has responsibility for the overall regulation of the corporation's services operating in NI. This regulatory framework, established through the Royal Charter, is intended alone to be national in its nature (DCMS, 2006b, Sections 12–27), with potential devolution of broadcasting powers to NI being something that would disrupt this arrangement. Some points can be made here that mitigate slightly on what would appear to be the terminal nature for the BBC in NI, were broadcasting powers devolved. The Silk Commission proposal to have a devolved BBC Trust within Wales is of relevance here (discussed above), and also the presence of S4C's own regulator, that works alongside Parliament and the BBC Trust, gives context. However, the devolution of broadcasting powers to NI would be different to this proposal and to the S4C model, as first, full devolution would

go further than the Silk proposal, and second, NI is unlikely to ever have an S4C style broadcaster under current demographics.

Second, the place of the UK regulator Ofcom would be untenable within NI. Given that the roles and functions of Ofcom are legislated for under the Communications Act 2003, this legislation would need changed (or reformulated, if and when a new communications act is brought to the statute book). This point is also closely related to what has already been said on the BBC, and indeed Ofcom is tied to the BBC both through legislation and agreement (DCMS, 2006b, Sections 91–95; BBC Trust/Ofcom, 2007; Ofcom, 2013d). Under current legislation, Ofcom is subject to the UK Parliament for the delivery of various functions, and therefore could not in its present form equally be accountable to the NI Assembly (for activities in NI). If broadcasting powers were to be devolved, NI would need a new communications regulator; in a similar way, Scotland would have needed a new communications regulator had it voted for independence. There, various options had been addressed for how these new institutions would have taken on the functions of Ofcom (Schlesinger, 2013). Moreover, the issue is further complicated by the fact that Ofcom also has scrutiny for telecommunications and the regulation of the postal service. Would only broadcasting regulation come under a new NI communications regulator, or also other Ofcom functions? If not all functions, then there would be a case where two Ofcoms would operate in NI. Finally, the cost of setting up a new regulator would be significant (a point that had also been made in relation to post-independence institutions in Scotland (BBC News, 2014).

Conclusions

In this article I have argued that while the likelihood for broadcasting powers being devolved to NI is low, given the current political arrangements in the NI Assembly, the devolution of broadcasting powers to NI would involve major changes to the broadcasting and regulatory environment. While such a move would inevitably involve a consultation period, and lengthy negotiations with various partners, the BBC could probably not continue in NI unless there was a new conception of the UK's PSM

regulatory environment at the national level. In conclusion, a few points may be made in relation to what could be considered as an alternative to the devolution of broadcasting powers, which may offer those elected representatives in NI who desire more self-determination over broadcasting other options. First, the NI Assembly could consider pressing for a set of measures to improve NI self-determination over broadcasting while stopping short of full devolution (such as what the Scottish Government suggested, in giving Scotland the opportunity to vary the licence fee in the country (Scottish Government, 2009b: 18)). Second, the provisions in the GFA which led to the setting up of the North South Ministerial Council and North South Implementation Bodies could be used as a vehicle for all-Ireland working on PSM. These currently allow for all-Ireland working on areas such as tourism, food safety and trade (North South Ministerial Council/An Chomhairle Aireachta Thuaidh Theas, 2014), but any such move to include broadcasting would most likely be met with Unionist opposition. Additional opportunities could be explored for increased PSM co-productions, and the failure to place BBC services on ROI DTT, discussed above, could be reconsidered through this channel.

In considering this subject within the NI context, it is important to also establish the relevance of this debate for other countries. One outcome of the Scottish referendum result is that scholars of policy will now not be able to observe what would have happened to the BBC in an independent Scotland, a historic shift that will now not happen for the conceivable future. As noted above, broadcasting may play a part in further discussions over devolution, while Scottish legislators could give further attention to the ongoing debates in NI. In relation to Wales, the decisions made by the Richard and Silk commissions to not recommend the devolution of broadcasting powers means that Wales can as yet avoid the problems that this case potentially raises in NI. However, Wales remains both comparatively well-served in terms of local PSM provision through S4C and independent regulations, compared to Scotland and NI. Further arguments for devolution of broadcasting powers to Wales must begin from a different position, one that is more challenging than in NI or even in Scotland. The missing component here is England, the ‘forgotten’ country when it comes to devolution, though with the continuing absence of an English Parliament there is no destination that powers could be devolved to. Ofcom does recognise England as a separate entity, and through the work of the

Ofcom Advisory Council for England ensures English representation for the UK's largest country (Ofcom, 2014d). Additional work on this subject or a fuller study could address the implications of the NI case within a European framework (such as Andrews' (2006) study of the issue in relation to Wales).

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