

Plurinationalism, Devolution and Intergovernmental Relations in the United Kingdom

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Introduction

The United Kingdom (UK) is a plurinational state with a complex model of asymmetric autonomy that has seen administrative, executive, legislative and fiscal powers devolved to Scotland, Wales and Northern Ireland. In the late 1990s, a law-making Parliament was established in Scotland, a law-making Assembly with a power-sharing executive in Northern Ireland and a National Assembly in Wales with wide-ranging executive and administrative powers, but no power to make primary legislation. The highly asymmetric nature of the devolution arrangements reflects the distinct histories, pre-existing administrative structures and territorial demands in the three territories. As Keating (2012: 224) attests, ‘this is a state in which not only does nationality differ from one part to another, but so does the very meaning of nation and its implications’. The devolution settlements took account of the UK’s pluralism, albeit this extended to just three of the constituent nations in the state. England, notwithstanding the fact it accounts for some 85% of the UK population, has no separate parliament or government; Westminster doubles up as both a UK-wide and English parliament.

A consequence of the UK’s asymmetrical autonomy model and the fact that devolution was very much limited to the Celtic periphery, no holistic view was taken as to how relations between the UK government and the devolved administrations would develop in the aftermath of setting up the devolved institutions. An infrastructure of intergovernmental relations (IGR) ultimately evolved, but this had the hallmarks of an afterthought, with a penchant for informal rather than formal interactions. Formal intergovernmental infrastructure was developed, specifically the establishment of the Joint Ministerial Committee (JMC) in 1999, but such formal mechanisms coupled with the ad-hoc nature of intergovernmental interactions resulted in ‘weakly developed’ intergovernmental machinery, ‘especially when contrasted with the formal machinery through which IGR are often conducted in other multi-level states’ (McEwen et al, 2012: 189).

The debate over the UK’s withdrawal from the European Union (EU) between 2016 and 2020 saw unprecedented levels of intergovernmental interaction, but the divergent Brexit preferences of the different government coupled with the ad hoc and weak nature of UK IGR limited the opportunity for intergovernmental compromise. This has once again refocused attention on the purpose, structure and logistics of existing intergovernmental machinery and the principles that undergird intergovernmental interaction. This is likely to prove a pressing concern as the Brexit process continues, including the negotiation of trade deals and development of both legislative and non-legislative common frameworks to protect the UK’s internal market. As the discussion in this chapter attests, this will be no mean feat in light of the under-developed nature of UK IGR and the resurgence of the Scottish independence movement.

The first and second sections of this chapter focus on the plurinational makeup of the UK and the development of autonomy arrangements in response to this. The next section discusses the different processes and structures of IGR in the UK, before moving on to examine the experience of IGR in practice vis-à-vis the plurinational nature of the UK, followed by a discussion on the most prevalent modes of IGR instruments and processes to manage territorial tensions. The main argument of this chapter is that the weak and under-institutionalised nature of IGR have contributed to heightening intergovernmental tensions in the UK's multi-level political system, manifest in increasingly vociferous identarian claims and competing constitutional outlooks. The debate and approach to Brexit between June 2016 and January 2020 fundamentally undermined extant constitutional arrangements, illuminating the inability of existing IGR structures to withstand momentous constitutional turbulence and underlining the urgent need for substantive reform.

The Plurinational State

The UK is a state marked by significant cultural, ethnic, linguistic, national and religious diversity. It is a plurinational state composed of four component parts (England, Northern Ireland, Scotland and Wales), each of which has a different relationship with the dominant English centre. Internal pluralism has been a feature of the state since its inception and while this has been dealt with in various ways, including attempts to dilute diversity, unlike other plurinational states (e.g. Spain), the Jacobin ideal of cultural homogenisation and standardisation has never been attempted or realised in the UK. As Tierney (2019: 278) notes, 'the UK was founded in full recognition of the national differences of which it was composed and, at least in the case of Scotland, there was a constitutional commitment to continue to recognise these differences in the functioning of the state'. In Scotland this took the form of an incorporating rather than assimilating union in which pre-existing institutions vis-à-vis church, education and law continued in the aftermath of union. This was not the case as related to (Northern) Ireland and Wales, but the plurinational composition of the state has long been accepted by successive UK governments and the constituent populations in the four nations. The acceptance and celebration of this internal diversity guaranteed a multi-layered conception of national identity within the different territories, combining a shared British identity alongside a distinctive sense of, *inter alia*, Scottishness or Welshness.

Recognition of plurinationalism throughout centuries past has not necessarily translated into support for political decentralisation in the component parts of the state. Various territorial models were mooted in the twentieth century – namely in response to political instability in Ireland – and while devolution was established in Northern Ireland in the aftermath of the creation of the Irish Free State in the 1920s, support for home rule in Scotland and Wales was rather muted. This changed with the founding of nationalist parties in both territories and fervent civil society engagement (namely in Scotland) in favour of self-government (Mitchell 1996). The eventual establishment of devolved structures in the late 1990s provided a platform for these nationalist parties and their distinct constitutional vision and in line with the accommodating nature of the UK political system, provided space for the development of Scottish, Welsh and Northern Irish distinctiveness alongside the overarching identity of

Britishness. This idea of the UK as a ‘Union of Nations’ underlines the accommodating approach of the UK in managing its internal pluralism, albeit constitutional contestation has not been abated (Anderson 2018).

Devolution in the UK

Preoccupation with territorial management in the UK has been developed in response to the different conceptions of identity in parts of the state. This is most clearly seen in the promotion of ‘home rule’ to inhibit nationalist feeling in Ireland and thus the rolling out of devolution to Northern Ireland in the 1920s, but also in the administrative structures of the Scottish, Welsh and Northern Irish territorial offices of central government. Debate on devolution permeated political debates for much of the latter half of the twentieth century including lukewarm support on the part of the Labour party (which held referenda on the issue in 1979) and the vehement opposition of the Conservatives, personified in Prime Ministers Margaret Thatcher and John Major.

Following his landslide victory in the 1997 general election, Tony Blair and his New Labour government introduced a raft of constitutional reforms, including referenda to establish devolved legislatures in Scotland and Wales, and in Northern Ireland as part of the Good Friday Peace Agreement (GFA). Majorities in all three territories endorsed the proposals and law-making legislatures were established in Scotland and Northern Ireland and a corporate body with secondary law-making powers in Wales.¹ The legislative Acts establishing the devolved legislatures enshrined the sovereignty of the Westminster Parliament and therefore formally underlined the subordinate status of the newly created institutions. In practice, however, the ability of Westminster to legislate in areas that have been devolved is limited by the Sewel Convention which states that the UK Parliament ‘will not normally legislate with regard to devolved matters without the consent’ of the devolved institutions.² What is more, the popular mandates secured through referendums in the devolved nations render it politically difficult for any UK government to seek the abolition of the devolved legislatures, unless supported by the respective populations. Indeed, the Scotland Act 2016 and Wales Act 2017 include clauses that constitutionally guarantee the permanency of the devolved institutions. From a legal perspective, ‘it remains the case that any Act of the Westminster Parliament, including foundational devolution legislation, can be repealed or amended without any formal referendum requirement’ (Leyland, 2013:158), but other scholars have argued that ‘popular consent, in one form or another, becomes a prerequisite for any subsequent fundamental change to the devolution ‘settlement’’ (Hadfield, 2011: 218).

¹ In Scotland, 74% of voters said ‘yes’ to a devolved Scottish Parliament while in Northern Ireland 71% supported the GFA. Support in Wales was comparatively lower with just over 50% of voters supporting a Welsh Assembly.

² The Sewel Convention, named after Lord Sewel, the minister in the Scotland Office responsible for the Scotland Bill during its passage through Parliament, was considered a crucial component in the Memorandum of Understanding initially developed between the Scottish and UK governments and since 2016 has been placed on statutory footing in the Scotland Act. A striking feature of the convention is that it has been used more frequently than envisaged; consent has been withheld on only a few occasions in the more than 300 times it has been used.

The devolution of competences in the UK was and remains highly asymmetrical. Scotland gained full legislative competence in all areas except for those matters reserved to the UK Parliament while Wales acquired no primary legislative powers. Akin to Scotland, the Northern Ireland Act did not specify the powers devolved to the Northern Irish Assembly and instead listed the competences for which they could not legislate. In line with the GFA, a power-sharing executive was established as well as a separate civil service and specific intergovernmental infrastructure such as the British-Irish Council and North-South Ministerial Council (Birrell 2012). In the two decades since the establishment of the devolved legislatures, further legislative and fiscal responsibilities have been devolved to all three nations, including full law-making powers for the Welsh Parliament.³

Devolution has entailed the development of distinct party systems in each of the devolved territories. This is more pronounced in Northern Ireland where the party system is largely based on the unionist-nationalist cleavage. The nature of forced power-sharing has proven a difficult endeavour and the Assembly has collapsed five times since 1999. In Wales, Labour has won every election since 1999, but has repeatedly failed to secure an overall majority, resulting in either minority administrations or coalition partnerships, including with the Welsh Nationalist party Plaid Cymru. In Scotland, a Labour-Liberal Democrat led the first two terms of the Scottish Parliament, but the SNP has dominated since 2007 (Anderson 2016). The election of the pro-independence SNP precipitated enduring debate about Scotland's constitutional status, culminating in a referendum in 2014 in which voters rejected independence. The referendum, however, failed to settle the matter while the 2016 referendum on the UK's membership of the EU reignited the territorial debate. The political salience of the independence debates has not dissipated.

Devolution has transformed the political dynamics of the UK yet has engendered very little change at the centre of the state. The development of self-governing powers for Scotland, Wales and Northern Ireland has not been afforded the same concern for increasing the influence of the devolved territories in central government affairs. This is evidenced in the absence of a territorially representative second chamber, the lack of formal mechanisms for regional representatives to influence constitutional reform and the underdeveloped and weakly institutionalised nature of IGR. It is to the latter we now turn.

Existing Intergovernmental Institutions and Processes

IGR in the UK follow a similar pattern to IGR in other multi-level and plurinational states. They include multiple formal and informal processes and structures for bilateral and multilateral interaction at both vertical (involving UK government) and horizontal (between devolved governments) levels. That being said, the UK's experience of IGR since the inception of devolution has been 'largely bilateral, vertical and informal' (McEwen et al, 2012: 189). Further, IGR in the UK are non-binding and non-statutory in nature and have thus come to rely upon 'goodwill and mutual trust' which has proven difficult in times of party incongruence and periods of high politics (McEwen and Petersohn, 2015: 192). Indeed, as a result of the latter, there has been an evident preference of government and other officials to use informal channels

³ The Welsh Assembly was renamed the Welsh Parliament in 2020.

and as such formal fora have tended to fall into periods of disuse (Anderson and Gallagher, 2018: 39). The preference for informality, for instance, entailed a conscious decision by the Labour governments in Edinburgh and London to not convene the plenary format of the JMC between 2003 and 2007. The existence of a unified civil service also facilitates informal interaction between the UK government, its departments and the devolved governments (Parry 2012).⁴

Much like the development of devolution itself, the approach taken to IGR has been rather ad-hoc and piecemeal. The lack of attention paid to IGR – which were not discussed in any of the White Papers published prior to the establishment of the devolved institutions – resulted in little reform at the centre. Whitehall departments changed very little in response to devolution, a reflection of the predominant narrative that devolution would have few implications for the workings of central government. This lack of adaptation on the part of central government thus informed the development of intergovernmental structures which are hierarchical and dominated by the UK government.

Numerous fora and channels have been developed to facilitate intergovernmental interaction. These take numerous forms including overarching formal fora such as the JMC Plenary and the British-Irish Council as well as other task-focused structures, such as the JMC (Europe) and Finance Ministers Quadrilateral. IGR also exist between the three devolved governments, albeit interaction in these areas is rather limited and develops on an ad-hoc basis, largely in reaction to UK government policy. It is important to note however, that outside formal structures of intergovernmental interaction between ministers and other officials from different governments, a robust system of IGR does exist and occurs daily behind the scenes: ‘much intergovernmental work happens below the radar as officials in both jurisdictions work pragmatically on issues that may be routine and uncontroversial or complex and technical in areas such as finance or law’ (Anderson and Gallagher, 2018: 38).

The JMC was set up in the aftermath of devolving power to Scotland, Wales and Northern Ireland. Its establishment grew out of debate during the passing of the Scotland Bill in 1998 and was subsequently detailed in the Memorandum of Understanding (MoU) published after the first devolved elections in 1999. The JMC was envisaged to meet annually and was billed as a forum of ‘central co-ordination’, bringing together representatives from the UK and devolved governments to discuss devolved and non-devolved matters, exchange information and experiences and consider disputes.⁵ Its focus, therefore, is around knowledge sharing and maintaining communication between the different levels of government and not on making decisions or determining central government policy (McEwen and Petersohn, 2015: 197). As such, the JMC was and remains a hierarchical structure, dominated by the UK government which chairs the meetings and largely controls the agenda (Trench 2004).

In addition to the plenary JMC, the MoU also made provision for the establishment of task-oriented subcommittees. A number of these were set up in the first term of devolution (1999-2003), including the JMC (Poverty), JMC (Knowledge Economy) and JMC (Health) (see, Trench 2003), but after relatively few meetings, these committees ‘ran out of steam’, partly

⁴ A separate civil service was established for Northern Ireland but entails close cooperation with the UK civil service.

⁵ It was not until 2010 that an official dispute resolution remit was introduced.

because of the preference for bilateral rather than multilateral engagement (Gallagher, 2012: 201). The subcommittees were replaced by the JMC (Domestic) which met for the first time in 2009, but has not met since 2014 owing to the difficulty in deciding agenda items relevant for all parties involved (McEwen, 2017: 673).⁶ Other subcommittees have proved more successful in terms of multilateral participation and frequency of meetings, namely the JMC (Europe), a standing subcommittee held before European Council meetings that met for the first time in March 2001. Over the years, however, a long litany of complaints has emerged regarding the organisation and functioning of the JMC fora, including the dominant role of the UK government, the location and timing of meetings, the lack of influence of the devolved governments and the absence of genuine equal to equal relationships between the UK and devolved governments. Moreover, political grandstanding has increasingly overshadowed JMC sessions as devolved ministers have occasionally used meetings to make political capital by publicly criticising UK government policies or making devolved policy announcements. The JMC, nonetheless, remains the apex of formal relations between the four governments.

Various other channels to facilitate multilateral intergovernmental interaction include quadrilateral meetings and the British-Irish Council. The most prominent quadrilateral meeting is the Finance Ministers Quadrilateral which brings together the Chief Secretary to the Treasury, the territorial secretaries of state and the finance ministers from the devolved governments to discuss common issues.⁷ The British-Irish Council (BIC) was established under the ‘third strand’ of the Good Friday Agreement to bring together representatives from both the UK and Irish governments, the devolved administrations in Scotland, Wales and Northern Ireland and the legislative bodies of the autonomous Crown territories, the Channel Islands (Guernsey and Jersey) and the Isle of Man. It was designed to facilitate and maintain a close relationship between Britain and Ireland through cooperation on policy areas of shared interest as well as ‘the exchange of information and common action’ (Lynch and Hopkins, 2001: 755). In bringing the different jurisdictions together in one body, the BIC is oft-promoted as an effective channel of IGR in facilitating interaction and a sense of common understanding, but crucially also plays a symbolic role in terms of parity for the devolved administrations and Crown dependencies vis-à-vis the British government (Coakley, 2014: 93).

Notwithstanding the various multilateral fora in UK IGR, the asymmetric nature of the devolved arrangements spawned the preference and pre-eminence of bilateral relations between the different devolved territories and the UK government. Bilateral discussions take place both formally and informally and the devolved administrations have sought to cultivate bilateral relationships with ministers and other officials in the UK government. Partly, this is because of asymmetry but is also rooted in the wish of the devolved governments, particularly the Scottish Government, to be treated as ‘an equal partner on the same footing as the UK government’ (Author’s interview with SNP Minister March 2017). As will be discussed in the next section, issues of identity and constitutional visions have shaped the devolved governments preference for bilateral relations. In the case of the Labour party in the first two terms of the Scottish Parliament, bilateral relations could be conducted informally – Labour colleague to Labour colleague – while since 2007, the SNP’s preference is rooted in its desire to challenge the hierarchical structure of devolution and have an equal to equal partnership

⁶ This is made difficult by the highly asymmetrical autonomy model.

⁷ Other sectoral quadrilateral meetings, such as on agriculture, also take place but these occur on an ad-hoc basis.

between Scotland and Westminster. Besides vertical bilateral relations, which also include official fora such as Joint Executive Committees (JEC) to manage the devolution of fiscal powers to Scotland and Wales since 2012, horizontal bilateral and trilateral IGR also take place. These take the form of meetings between the First Ministers of the devolved territories or other ministers and officials. Horizontal interaction, however, is somewhat limited. This is primarily because of the highly asymmetric nature of devolution in the UK which has led to the devolved nations focusing more on their own interests rather than coordinating and working with the other nations. Unlike other cases discussed in this book, (e.g. Canada and Spain), there is no formal intergovernmental body that brings together the three First Ministers. In recent years, opposition to EU withdrawal has seen increased horizontal collaboration between the Scottish and Welsh governments which, despite their different constitutional visions on the union, have formed a working partnership to enhance their influence on the Brexit process. This has taken the shape of various meetings between the First Ministers, cabinet ministers and officials and the publication of joint statements.

Before moving on to examine the experience of IGR in the UK vis-à-vis interaction between the subnational units and Westminster, it is important to also underline the crucial importance played by the Sewel Convention as an instrument to regulate intergovernmental interaction. The doctrine of Parliamentary Sovereignty dictates that despite the establishment of devolved legislatures, the Westminster Parliament retains legislative supremacy, including the ability to pass laws for the devolved territories in all matters. The Sewel Convention, therefore, necessitates legislative consent from the respective institution prior to the procession of legislation in Westminster. Since the inception of devolution, the convention has garnered little controversy and has been used far more than expected.⁸ In recognition of the important role played by Sewel, the Scotland Act 2016 and Wales Act 2017 placed the Convention on statutory footing, although as made clear by the Supreme Court in its ruling in *Miller V Secretary of State for Exiting the European Union* (UKSC 2017), it is a political not legally enforceable convention; the convention, while important, does not amount to an entrenched veto power.

Intergovernmental Relations in Practice

The plurinational nature of the UK state has shaped the experience of IGR in the UK, particularly as relates to managing the distinct territorial visions and identity claims from the different nations. Since devolution in the late 1990s, IGR have been marked by three phases: 1999-2007, 2007-2016 and 2016+. In the first phase (1999-2007), the electoral hegemony enjoyed by the Labour party in Westminster, Scotland and Wales facilitated cordial and cooperative relations between the governments despite occasional disagreements. The effect of party congruence and thus the absence of rival nation-building projects (which became the case after 2007) precipitated a rather trouble-free period of intergovernmental interaction. Interaction that did take place was largely bilateral and informal, evidenced in the conscious disuse of the JMC as a plenary forum. Between 1999 and 2007, IGR was very much an intra-party affair.

⁸ To date, over 300 legislative consent motions have been passed by the devolved legislatures while consent has been withheld on only nine occasions (Evans 2020).

The period 2007-2016 was marked by numerous changes in the British and devolved political systems, although the experience of IGR largely mirrored the previous phase. In 2007, the SNP formed a minority administration in Scotland, Plaid Cymru joined Labour in coalition in Wales and the power-sharing executive in Northern Ireland was restored. Just a few years later, the 2010 general election heralded a significant shift in UK politics and the election of the first post-war coalition government between the Conservatives and Liberal Democrats. For the first time since the inception of devolution, different parties were in government in Belfast, Cardiff, Edinburgh and London. Surprisingly, and contrary to expectations which envisioned more conflictual IGR in the face of such party incongruence, changes to IGR dynamics were largely moderate and relatively free from controversy (McEwen et al 2012).

In Scotland, the SNP came to power endorsing a more assertive stance in increasing Scotland's voice in central government affairs. The constraints of minority government coupled with the SNP's objective to prove itself as a competent government, however, coloured its approach to Scotland-Westminster relations and ultimately resulted in efforts to foster a constructive relationship with Westminster and Whitehall. The elevation of the SNP to government was instrumental in the restoration of the JMC as the main IGR forum. This was supported by the SNP government which lobbied for its reinstatement, but was also shaped by the Scottish Government's insistence in ensuring IGR were underpinned by the principle of parity of esteem. From the viewpoint of the new Nationalist government, the Scottish and UK governments should be treated on an equal basis, notwithstanding the notable power imbalance institutionalised by devolved structures. Interestingly, however, akin to the previous Labour administration, SNP ministers equally displayed a penchant for informal interaction, typically bilateral meetings between officials and ministers (Cairney 2012). This preference for bilateralism was rooted in an 'understanding that Scotland should be treated as an equal counterpart to the UK Government' but also grew out of practical considerations: 'speaking one-to-one, that is, minister-to-minister, is easier and more efficient than discussions in a big forum' (Author's interview with SNP Minister, February 2017).

In a similar vein to the SNP, Plaid Cymru did not seek a confrontational approach to IGR with the UK government. Such an approach was largely constrained given the party was in coalition with Labour (which remained in power in Westminster until 2010), but like the SNP the focus for Plaid was to use 'its time in office to kill off any doubts about its ability to govern' (Wyn Jones and Royles, 2012: 262). The election of the coalition government in Westminster in 2010, however, resulted in a significant deterioration in Wales-Westminster relations. The newly appointed PM David Cameron committed to a 'respect agenda' in relations between the UK and devolved governments, but Welsh-UK relations waned and were increasingly marked by a willingness of Welsh ministers to 'draw attention to and criticise those instances during which the UK government – in their view, at least – failed to honour David Cameron's self-styled 'respect agenda' (Wyn Jones and Royles, 2012: 263). Identity politics played only a marginal role in the increase of more conflictual Wales-Westminster IGR. Rather, strained relations grew out of ideological divergence between Labour in Wales and the Conservatives in Westminster.

As is the case in multilevel systems, periodic tensions have arisen between all devolved administrations and the UK Government. Between 2007 and 2016 official disputes ranged from individual government-raised disputes such as disagreement over North Sea fishing quotas in

Scotland and a dispute over capital expenditure commitments in Northern Ireland to a collectively-raised dispute involving all three devolved governments concerning consequential payments of the Barnett Formula arising from planned expenditure for the 2012 London Olympics. What is more, this period saw the first-time denial of legislative consent from the devolved legislatures. In 2011, for instance, the Scottish Parliament refused legislative consent for some parts of the UK Welfare Reform Bill. Ideological divergence between the Scottish and Westminster governments largely explains the rationale behind the refusal of consent, with both the Scottish National and Labour parties in Scotland opposing because of perceived injustices in the UK Government's proposals. In line with Keating (2012), opposition to social welfare reform, and thus the need to create specific legislation in the Scottish Parliament, also illustrates the development of a 'welfare nationalist' approach to social policy in the devolved nations. Policy divergence can be located in all three devolved territories which thus entails implications for IGR; competitive regionalism 'implies less intergovernmental harmonisation and more policy and fiscal autonomy' (Keating, 2012: 279). This has certainly proven to be the case in the UK since the inception of devolution, and has been further heightened in recent years by party incongruence. As noted above, little may have changed in the conduct of IGR in the aftermath of the formation of a SNP government in 2007, but this did not completely blunt opportunities for the SNP to make political capital in standing up for Scottish interests and spotlighting tensions with Westminster.

Preparations for the Scottish independence referendum in 2014 also underline intergovernmental tensions in the plurinational context of the UK, but simultaneously illuminate the continued functioning of intergovernmental interaction in times of significant political tensions. The election of a majority SNP government in 2011 rendered the celebration of an independence referendum a likely event. This was accepted by the Conservative-Liberal Democrat coalition in Westminster, but disagreement ensued over whether the Scottish Parliament had the legislative competence to organise a referendum (as the SNP believed) or whether this power would have to be devolved by Westminster. The constitutional entanglement further illuminated the challenges of IGR in the UK, particularly as relates to the competing nationalist projects of the Scottish and UK governments. Eschewing recourse to the courts, the Scottish and UK Governments produced the Edinburgh Agreement to facilitate a referendum on independence via a temporary transfer of authority from Westminster to Holyrood. The Agreement has been hailed 'a triumph in intergovernmental relations for both sides' (Convery, 2014: 33) and demonstrated that even in the most highly charged constitutional contexts, positive outcomes can still ensue from intergovernmental cooperation undergirded by good faith negotiations.

While identity politics and competing constitutional visions seem to have played only a marginal role in the experience of IGR between 1999-2016, this all changed in the aftermath of the vote to leave the EU in June 2016. The territorial incongruity in the results (which saw Scotland and Northern Ireland vote remain while England and Wales voted leave) led to an intensification of IGR but interaction was far from harmonious, coloured by the distinct constitutional outlooks of the various governments.⁹ This constitutional showdown has been

⁹ The pro-European and pro-independence Scottish Government's constitutional vision evidently jars with the pro-Brexit and Unionist credentials of the Conservative government in Westminster. However, although Wales narrowly voted in favour of Brexit, the position of the Labour government in Wales remained wedded to the

largely played out between the Europhile SNP government in Scotland and Eurosceptic Conservative government in Westminster.¹⁰ In this sense, intergovernmental meetings became charged affairs in which the Scottish Government was wholly opposed to any strategy for EU withdrawal, while the Conservative government rode roughshod over the concerns of the devolved nations (not just Scotland) in its pursuit of a unilateral approach to withdrawal. Despite the establishment of the JMC (EN) to secure a pan-UK approach to EU withdrawal, the competing nationalist projects and lack of trust between the different governments rendered intergovernmental agreement an impossible task. The forum, despite regular meetings, ultimately failed in its primary objective: no agreed UK-wide approach to EU withdrawal was achieved. Hardened political attitudes thus ensued, evidenced in the refused legislative consent by all three devolved institutions for the UK Government's European Union Withdrawal Agreement Bill in early 2020. The bill, nonetheless, gained royal assent despite the collective discontent among the devolved institutions and consequently has called into question the standing of the Sewel Convention. The experience of EU withdrawal has significantly challenged the already weakly institutionalised nature of IGR in the UK and paints a bleak picture for their future evolution in the post-Brexit UK.

Different understandings of identity, distinct interpretations of the state and nation and competing constitutional visions certainly informed the differing results in the 2016 EU referendum (Henderson et al 2017) and likewise detrimentally affected intergovernmental interaction. The experience over EU withdrawal exposed significant weaknesses in the UK's IGR machinery and further demonstrated the challenges of managing competing identity claims and constitutional viewpoints in a plurinational context. In the UK, intergovernmental institutions and processes have largely failed in helping to manage communal tensions and on the contrary have served as a vehicle for the expression of frustration. IGR as a result, have become a notable source of tension.

Intergovernmental Relations: A Tool of Plurinational Management?

As this volume attests, IGR play an important role in divided and plurinational societies. In the case of the UK, IGR indisputably play an important role, but the evolution of devolution since 1999 has seen focus on enhancing the autonomy of the devolved nations rather than reforming and institutionalising structures to facilitate interaction at the centre. This absence of effective shared rule thus renders intergovernmental interaction a difficult task. Notwithstanding the weak nature of IGR in the UK, relations are further complicated by the competing nationalist projects and distinct constitutional visions of the different governments in the state. While it is a truism that such distinct interpretations of the state necessitate functioning and effective IGR, this has also precluded constructive interaction in the UK.

idea of remaining in the EU. Northern Ireland was a case apart in which the Democratic Unionist Party's vision aligned with that of the Conservatives while its power-sharing partner Sinn Fein advocates a pro-EU stance coupled with support for unification with Ireland (see Anderson and Keil 2020).

¹⁰ EU withdrawal obviously has a significant impact on Wales and Northern Ireland, but the impact of identity politics on IGR has been more limited in comparison to Scotland given Wales also voted to Leave while the Northern Irish Assembly was suspended between 2017-2020.

In line with the plurinational set-up of the UK and the asymmetric nature of devolution, bilateral relations between a devolved nation and the UK government is the typical mode of interaction in the UK. On the one hand, this is clearly understood as a necessary measure given the highly asymmetric autonomy arrangements, but on the other hand is shaped by the desire of political parties to place the nation and its autonomous structures on equal footing with the machinery of the central state. This has resulted in a fairly adversarial relationship between the UK and Scottish and Welsh governments, the former influenced by its hierarchical conception of the state and thus legislative and executive supremacy. The experience of IGR hitherto demonstrate that the UK government is not opposed to conducting IGR bilaterally, but unlike the SNP, neither Conservative nor Labour Prime Ministers have equated the governments as equal (Cairney 2011). This is evidenced in the paucity of bilateral meetings between the Prime Minister and devolved First Ministers as well as the hierarchical nature of multilateral fora (Swenden and McEwen 2014). For the Scottish Nationalist government, bilateral relations with Westminster (and other institutions such as the European Commission) hold important symbolic value in illuminating Scotland's stance as a separate nation with an autonomous government. This has also proven to be the case for Welsh Labour whose unionist nationalist approach has enabled the government to stand up for Wales while concomitantly supporting the continuation of the union (Bennie and Clark 2019).

Bearing the above in mind, it would be premature to simply dismiss the importance and use of multilateral fora. As the main multilateral mechanism, the JMC is considered a weak and ineffective forum. While this is in part shaped by the structure and procedures of the committee itself this is also because of the different uses envisaged for the forum. On the part of the UK government, multilateral interaction is often reduced to opportunities for knowledge exchange and discussion, while the devolved governments want to use these meetings as opportunities to exert real influence on central government policy. Conflicting ideas about the JMC's role preclude its development as an effective IGR forum.

Other multilateral fora, however, have proven much more successful. Finance Ministers Quadrilaterals are generally viewed in a positive light, while the British-Irish Council is considered an effective mechanism that sees all governments treated on an equal level (Coakley 2014). Further, the JMC (Europe) which facilitated consultation between the different governments on EU policy before European Council Meetings, is oft-hailed as the most successful component of the UK's IGR machinery. The success of this forum, as opposed to the JMC plenary, was the active involvement of the devolved governments in setting the UK's government's European agenda which enabled the nations to ensure their concerns were heard and taken into account in the formulation of the UK government's position.¹¹ This entailed 'the possibility for a minister from a devolved nation to represent the United Kingdom at the EU Council (Hunt and Minto, 2017: 650) but also enabled the sharing of 'niche expertise' on the parts of the devolved governments in devolved areas relevant for European policy-making such as agriculture and fisheries (McEwen, 2017: 676). The success of the JMC (Europe) is indisputably linked with the active role played by the devolved nations in being able to contribute to discussions and thus influence adopted positions in Council meetings. In a similar vein to the preference for bilateral relations, the JMC (Europe) facilitated the notion of equal partnership.

¹¹ Influencing EU policy is considered an important priority for minority nationalist parties such as the SNP whose independence objective is firmly anchored within the European project (see Anderson and Keil 2016).

The UK employs a variety of intergovernmental modes, including formal, informal, bilateral and multilateral instruments, albeit their collective efficacy as a tool of territorial management remains weak. The lack of shared rule provisions developed in the aftermath of devolution is reflected in the subsequent creation of intergovernmental machinery, which remains under-institutionalised, hierarchical, ad hoc and suspiciously viewed by the devolved governments. This has become much more pronounced in light of party incongruence, divergent Brexit preferences and competing constitutional outlooks. IGR thus, only weakly function as a tool of territorial management in the UK. What is more, rather than helping to accommodate the competing identities and nationalist projects in the state, the different institutions and processes of IGR have become an intractable source of tension. This is because of the ad hoc nature of interaction, but also the absence of mechanisms to facilitate and guarantee subnational influence on central government decisions and policy. As long as IGR remain hierarchical and controlled by the UK government, their ability to manage communal tensions and accommodate the different visions and voices in the plurinational UK is limited.

Conclusion: Looking Back to Look Forward

Two decades after the establishment of the devolved institutions, devolution and interaction between the different governments remain a work in progress. Devolved arrangements have evolved since 1999, beefing up the powers and responsibilities of the Scottish, Welsh and Northern Irish governments and legislatures, but IGR have not quite caught up with these fluid and evolving circumstances. In some instances, intergovernmental machinery has been adapted to manage changing contexts, such as the establishment of the JMC (EN) to manage Brexit but in the main, central government action remains behind the curve. Westminster governments – of different political hues – have been passive in seeking to institutionalise processes and structures to manage and better facilitate intergovernmental interaction. Constitutional contestation has also proven a catalyst in rejuvenating attention to IGR, but as the experience in preparing for EU withdrawal between 2016 and 2020 underlined, IGR are generally hierarchical, executive-dominated and held in poor esteem by the devolved governments.

Notwithstanding the foregoing, a set of intergovernmental processes and structures have evolved in the UK and much conflict-free intergovernmental interaction occurs on a daily basis behind the scenes. IGR processes are largely bilateral, informal and vertical, but formal multilateral fora have developed, as well as horizontal interaction between the devolved governments. Bilateral interaction is the most common trend of IGR and has developed out of both necessity and preference. On the one hand, bilateral interaction was necessary in response to the highly asymmetrical nature of the devolution settlements, while on the other hand has been the preference of the devolved governments, particularly in Scotland under the SNP. As McEwen (2017: 670-671) attests, in ‘strong identity regions’ bilateral IGR ‘can be a useful channel through which regional governments aim to maximize their decision-making autonomy, by pushing constitutional boundaries and negotiating increased constitutional and policy competences, or by preventing central government from encroaching upon regional jurisdiction. The UK’s experience with IGR is a case in point.

The plurinational make-up of the UK state has proven a challenge for IGR. Recognition of the UK's internal pluralism was given institutional effect in the establishment of the devolved institutions in the late 1990s, but this was not translated into reforming the structures of the central state. Self-rule has been developed at the expense of shared rule. The absence of shared rule mechanisms thus renders intergovernmental interaction a difficult affair, not least in the context of different political parties in power in the different parts of the state. In the case of the UK, this is clear in the different nation-building approaches of each of the devolved nations under the auspices of different political parties and more recently has become further pronounced in the face of contested constitutional politics. In lieu of intergovernmental cooperation, the prevalence of distinct territorial visions has detrimentally impacted on intergovernmental trust and IGR machinery itself has become a significant source of controversy.

Between 1999 and 2016, IGR functioned rather smoothly. This is in part because of party congruence between 1999 and 2007, but even in the face of different parties being elected in different institutions from 2007 onward, IGR operated in a similar fashion. Contrary to expectations that the election of the SNP to government in Scotland would precipitate more conflictual relations with Westminster, this was not the case under either Labour (until 2010) or Conservative (2010-2015) governments. During this period tensions certainly became more pronounced (in Wales as much as Scotland), but this had more to do with party competition and ideological divergences than identity politics. This, however, was not the case in the aftermath of the 2016 referendum on EU withdrawal. The territorial incongruity of the results increased political and intergovernmental antagonism and spotlighted the challenge of managing competing territorial tensions in a plurinational state. The unilateral approach of the UK government in the face of significant opposition from the devolved governments thus reignited identarian tensions and precipitated a more adversarial approach to IGR. In challenging the territorial politics of the UK, Brexit has further illuminated the competing interpretations of the constituent nations and thus renders the current and future pursuit of intergovernmental cooperation and compromise a rather difficult if not impossible task.

The experience of IGR in the Brexit debate has underlined the urgency for reform, particularly in the context of vociferous discussions on Scottish independence and Irish reunification (Anderson and Keil 2020). What is more, the return of powers from Brussels, the development of common policy frameworks and new policy interdependencies across the UK will necessitate close cooperation between the different governments. Extant intergovernmental infrastructure is unlikely to engender confidence that the voices of the devolved administrations will be heard and listened to in these debates and thus requires some imaginative thinking on how IGR can be recast in the near future. In the context of increasing constitutional contestation, reform has never been more important. IGR have become much more than simply ensuring the voices of the devolved institutions are heard in Westminster and Whitehall, they may also prove integral in keeping the union intact.

Bibliography

Anderson, G. and Gallagher, J. 2018. 'Intergovernmental Relations in Canada and the United Kingdom' in M. Keating and G. Laforest (ed.) *Constitutional Politics and the Territorial Question in Canada and the United Kingdom*. Basingstoke: Palgrave MacMillan, pp. 19-47.

- Anderson, P. 2018. *Territorial Politics in Flux: Autonomy and Secession in the UK and Spain*. PhD Thesis, Canterbury Christ Church University.
- Anderson, P. 2016. 'The 2016 Scottish Parliament Election: a nationalist minority, a Conservative comeback and a Labour collapse', *Regional and Federal Studies*, 26:4, pp. 555-568.
- Anderson, P. and Keil, S. 2020. 'Scotland, the UK and Brexit – At a Constitutional Crossroads: What next for Scotland?', *CIFE Policy Paper*.
- Anderson, P. and Keil, S. 2016. 'Minority Nationalism and the European Union', *L'Europe en Formation*, 379, pp. 40-58.
- Bennie, L. and Clark, A. 2019. 'Labour party adaptation to multilevel politics: evidence from British general election manifestoes', *British Politics*, DOI: <https://doi.org/10.1057/s41293-019-00122-7>
- Birrell, D. 2012. 'Intergovernmental Relations and Political Parties in Northern Ireland', *The British Journal of Politics and International Relations*, 14:2, pp. 270-284.
- Cairney, P. 2012. 'Intergovernmental Relations in Scotland: What was the SNP Effect?', *The British Journal of Politics and International Relations*, 14:2, pp. 231-249.
- Cairney, P. 2011. 'The New British Policy Style: From a British to a Scottish Political Tradition', *Political Studies Review*, 9: 2, pp. 208-220.
- Coakley, J. 2014. 'British Irish Institutional Structures: Towards a New Relationship', *Irish Political Studies*, 29:1, pp. 76-91.
- Convery, A. 2014. 'The 2011 Scottish Conservative Party Leadership Election: Dilemmas for Statewide Parties in Regional Contexts', *Parliamentary Affairs*, 67:2, pp. 306-327.
- Evans, A. 2020. 'A Tale as Old as (Devolved) Time? Sewel, Stormont and the Legislative Consent Motion', *The Political Quarterly*. DOI: <https://doi.org/10.1111/1467-923X.12795>
- Gallagher, J. 2012. 'Intergovernmental Relations in the UK: Co-operation, Competition and Constitutional Change', *The British Journal of Politics and International Relations*, 14:2, pp. 198-213.
- Hadfield, B. 2011. 'Devolution: A National Conversation' In J. Jowell and D. Oliver (Ed.), *The Changing Constitution*. Oxford: Oxford University Press, pp. 213-236.
- Henderson, A., Jeffery, C., Wincott, D. and Wyn Jones, R. 'How Brexit was made in England', *The British Journal of Politics and International Relations*, 19:4, pp. 631-646.
- Hunt, J. and Minto, R. 2017. 'Between intergovernmental relations and paradiplomacy: Wales and the Brexit of the regions', *The British Journal of Politics and International Relations*, 19:4, pp. 647-662.

- Keating, M. 2012. 'Intergovernmental Relations and Innovation: From Co-operative to Competitive Welfare Federalism in the UK', *The British Journal of Politics and International Relations*, 14:2, pp. 214-230.
- Lynch, P. and Hopkins, S. 2001. 'The British-Irish Council: Progress Frustrated', *Regional Studies*, 25:8, pp. 753-758.
- McEwen, N. 2017. 'Still better together? Purpose and power in intergovernmental councils in the UK', *Regional and Federal Studies*, 27:5, pp. 667-690.
- McEwen, N. and Petersohn, B. 2015. 'Between Autonomy and Interdependence: The Challenges of Shared Rule after the Scottish Referendum', *The Political Quarterly*, 86, pp. 192-200.
- McEwen, N., Swenden, W., and Bolleyer, N. 2012. 'Introduction: Political Opposition in a Multi-Level Context', *The British Journal of Politics and International Relations*, 14:2, pp. 187-197.
- Mitchell, J. 1996. *Strategies for Self-Government*. Edinburgh: Polygon.
- Parry, R. 2012. 'The Civil Service and Intergovernmental Relations in the Post-Devolution UK', *The British Journal of Politics and International Relations*, 14:2, pp. 285-302.
- Swenden, W. and McEwen, N. 2014. 'UK devolution in the shadow of hierarchy? Intergovernmental relations and party politics', *Comparative European Politics*, 12:4-5, pp. 488-509.
- Tierney, S. (2019). 'After the Scottish Independence Referendum: Toward a Federal Moment for the United Kingdom?' in G. Anderson and S. Choudhry (ed.) *Territory and Power in Constitutional Transitions*. Oxford: Oxford University Press, pp. 275-291.
- Trench, A. 2004. 'Devolution: The Withering-away of the Joint Ministerial Committee', *Public Law*, 513.
- Trench, A. 2003. 'Intergovernmental Relations Officialdom still in control?' in R. Hazell (ed.) *The State of the Nations 2003: The Third Year of Devolution in the United Kingdom*. Exeter: Imprint Academy, pp. 143-168.
- UKSC. 2017. *Judgement R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)*. 24 January 2017. Available at: <https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>
- Wyn Jones, R and Royles, E. 2012. 'Wales in the World: Intergovernmental Relations and Sub-state Diplomacy', *The British Journal of Politics and International Relations*, 14:2, pp. 250-269.