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UK Devolution in the Shadow of Hierarchy?

Intergovernmental Relations and Party Politics

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Special Issue: The Dynamics of Multi-Level Systems

Guest Editors: Nicole Bolleyer, Wilfried Swenden and Nicola McEwen

Abstract:

This article looks at the dynamics of intergovernmental relations in the context of UK devolution and how these have been affected by the more widespread occurrence of party incongruence since 2007. As predicted by the hypotheses in the introduction to this special issue, we first show how the asymmetric design of devolution is conducive to bilateral and weakly institutionalized intergovernmental relations, and how the asymmetric design of UK devolution has been perpetuated since devolution was implemented in 1999. Yet, although devolution (unlike federalism) implies a constitutional hierarchy between levels, in the second part of the article we demonstrate that UK governments have used their constitutional muscle with some restraint, in part for fear of losing electoral support and legitimacy among their electorates. Finally, although the absence of wide-scale intergovernmental conflict in the face of party incongruence is consistent with the third hypothesis of the introduction, we argue that this is not simply the result of the devolved state alone, but also of other institutional features and the presence of political context in which neither the UK government nor the devolved governments would benefit from a path which prioritizes intergovernmental conflict over cooperation.

Keywords: devolution, federalism, intergovernmental relations, independence, party incongruence

1. Introduction

Constitutional change has been high on the UK agenda since the election of a Labour government in 1997, from devolution to electoral reform, House of Lords reform and the constitutional recognition of civil and human rights (Evans, 2003; Hazell 2010). Not all of the proposed constitutional changes have taken effect. The UK Parliament is still elected under the first past the post system, the most advanced of the proposals for electoral reform, the Alternative Vote, having been rejected in a referendum in 2011. House of Lords reform has only been partially implemented, while the future of the Human Rights Act is uncertain under the current administration. Yet, one constitutional change appears to be firmly entrenched, i.e. the granting of self-rule to Scotland, Wales and Northern Ireland under 'UK devolution'. In fact, self-rule for each of these three territories has deepened since the first direct election of the Scottish, Welsh and Northern Irish Parliaments/Assemblies in 1999.

In this article, we will first analyse to what extent devolution has transformed our understanding of the UK as a union-state. While in some sense devolution arguably puts the UK beyond the range of 'regionalized states', it falls short of being a federalized or confederal system. For one, *formally* speaking, UK parliamentary sovereignty remains intact, including the formal authority to amend the devolution acts on the basis of which Scotland and Wales were granted self-rule. (Northern Ireland is a little more complex). Furthermore, there is no *guaranteed* representation of the devolved administrations at the centre (either in the UK government or in the second chamber of Parliament) whenever it decides on issues that are of mutual central-devolved concern (for instance when the UK Treasury decides on spending allocations for the devolved governments). Finally, and perhaps most importantly,

thus far, England, with about 85% of the overall population, lacks any form of territorial self-rule. Hence the UK government doubles up as the government of England in policies that are devolved to Wales, Scotland and Northern Ireland. In addition Scotland, Northern Ireland and Wales all operate under distinctive self-rule arrangements, making UK devolution exceptionally asymmetric.

This pattern of asymmetry seems set to continue. Although Welsh autonomy is moving closer to the current Scottish arrangement, debates in Scotland are now between the Scottish government's preferred option of independence and a range of alternatives which imply a substantive widening of the Scottish Parliament's current competencies, especially in taxation. The latter may not be on offer in the 2014 independence referendum, but few doubt the direction of change towards more self-government, whatever the referendum outcome. The highly asymmetric nature of devolution has two major consequences for the nature and dominant mode of interaction of IGR, and for the long term development of the constitutional system. We turn to both of these aspects in turn. First, as hypothesized by the general introduction to the special issue, an asymmetric design is conducive to bilateral and weakly institutionalized intergovernmental relations. Second, *asymmetry,* more so than the *lack* of *constitutionally entrenched* self-rule, makes the devolved governments vulnerable to the 'shadow of hierarchy' (Heritier and Lehmkuhl, 2008). The UK government overlooks devolved interests when it operates as the government for England (even though externalities are often large due to the disproportionate size of England in the UK) and it may also at times neglect devolved interests when acting as the UK government (because the devolved governments have limited shared rule at the centre).

In addition, we may expect that the shadow of hierarchy is likely to become most visible when the UK and the devolved governments are led by different political parties. Under such conditions of party political incongruence, differences of opinion between the centre and the devolved governments may be aired more openly since they can no longer be settled within the same party organizational structure. Government are thus more dependent upon intergovernmental channels in areas of policy interdependence, policy overspill and resource dependence. The limitations of a hierarchical intergovernmental structure are then more exposed. Conversely, during periods of party congruence in the composition of government, close links between political parties can contain differences, facilitate mutual agreement and co-ordination, and help to resolve disputes. As Table 1 below demonstrates, party political incongruence has become a more widespread feature of devolution since the devolved elections of 2007, and especially since the Westminster general election of 2010, which resulted in full incongruence in the composition of multi-level government across the UK.

Table 1: *Government Formation since Devolution, 1999-2012*

	Westminster	Scotland	Wales	Northern Ireland**
1999-2003	Labour majority	Lab-Lib Dem Majority	Lab minority (- Oct. 2000) Lab-Lib Dem majority	Cross-party consociational govt, led by UUP & SDLP (-2002)
2003-2007	Labour majority	Lab-Lib Dem Majority	Lab 'majority' (-2005)*; Labour minority (2005-2007)	Suspension of devolution
2007-2011	Labour majority (-2010) Cons-Lib Dem majority	SNP minority	Lab-Plaid Cymru majority	Cross-party consociational govt, led by DUP & Sinn Féin
2011-present	Cons-Lib Dem majority	SNP majority	Labour Minority*	Cross-party consociational govt, led by DUP & Sinn Féin

* Labour won exactly half of the Assembly's 60 seats in 2003, but an opposition AM was elected to the position of Presiding Officer, thus giving them a nominal majority of 1. This ended when Peter Law, the AM for Blaenau Gwent, defected from Labour to become an Independent, in protest against the imposition of all-women shortlists for candidacies for the 2005 General Election. Labour again won half of the seats in 2011, falling just short of an overall majority. This was effectively reduced by 1 when a Labour Assembly Member was elected to the post of Presiding Officer.

** The Northern Ireland Assembly was suspended between February and May 2000; 24-hour suspensions in August 2001 and September 2001; and from October 2002. A transitional assembly was set up in October 2006, paving the way for the restoration of devolution in 2007 (Northern Ireland Assembly, 2011 http://www.niassembly.gov.uk/io/summary/new_summary.htm#7)
Source: adapted from McEwen, *et al*., 2012: 190.

However, both the hierarchical features of the UK's multi-level system, and the asymmetric constitutional structure, may limit the extent to which party political incongruence provokes a radical transformation in multi-level dynamics. In the final section of our paper we assess whether - as hypothesized in the introduction to this volume - the effect of party political incongruence on the dynamics of intergovernmental relations remained limited as a result of the UK's non-federal setting *even when* devolved self-rule is exercised solely by a nationalist party which seeks independence from the UK, as has been the case in Scotland since 2007.

2. Neither federal, nor unitary: the UK's evolution from a union to a devolved state

Although the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales were not established until 1999, it would be wrong to presume that the UK prior to 1999 was a wholly unitary state. The United Kingdom was, and remains, a *union*, or more accurately perhaps, a 'state of unions' (Mitchell, 2009) between England and the other constituent nations of the UK. Each of these unions has its own characteristics. Their establishment was not a partnership between equals. Wales was unilaterally incorporated into England under Henry VIII in 1536. Scotland on the other hand forged a union of crowns in 1603 (under King James VI) with England and a treaty of political union in 1707. The Treaty led to the merger of the parliaments of England and Scotland into the government and parliament of Great Britain, becoming the United Kingdom parliament after union with

Ireland in 1800. After the secession of Ireland from the UK in 1921, the six counties that form Northern Ireland remained with the United Kingdom (McLean and McMillan, 2005: 2).

The piecemeal emergence of the UK was captured well by Rokkan and Urwin (1982: 11) who referred to the UK as a *union state* that is:

> not the result of straightforward dynastic conquest. Incorporation of at least parts of its territory has been achieved through personal dynastic union, for example by treaty, marriage or inheritance. Integration is less than perfect. While administrative standardization prevails over most of the territory, the consequences of personal union entail the survival in some areas of pre-union rights and institutional infrastructures which preserve some degree of regional autonomy.

That survival of 'pre-union rights and institutional infrastructures' which Rokkan and Urwin allude to was clearest in the case of Scotland, which held on to its distinctive church, legal and educational system after 1707. A system of territorial administration (the Scottish Office) developed from the late nineteenth century and throughout the twentieth century, often in response to pressure for greater Scottish 'home rule'. The Scottish Office was headed by a Secretary of State for Scotland who assumed symbolic significance as Scotland's representative in central government (Mitchell 2009: 19, see also Mitchell 2003). Such 'rights and infrastructures' were much weaker in the case of Wales, due to the more strongly assimilationist character of its incorporation into the United Kingdom. It was not until 1964, following a strong local campaign, that similar administrative and ministerial offices were created for Wales. The Welsh Office and Secretary of State for Wales had a more limited portfolio than their Scottish counterparts. The distinctiveness of civil society was also weaker, and in contrast to Scotland, Wales lacked a distinctive legal jurisdiction (Bogdanor, 1979; Bradbury, 1998). The union between England and Ireland had more closely resembled a colonial relationship, and the issue of home rule frequently dominated UK parliamentary politics from the late 19th century. Following the partition of Ireland in 1921 in the wake of

the Irish war of independence, an extensive system of devolved government within the UK prevailed in the north, surviving until its suspension in 1972 amid violent sectarian conflict (McLean and McMillan 2005; Ruane and Todd, 1996; Tonge, 2002). During the ensuing period of mainly 'direct rule', the Northern Ireland office - largely modelled on the other territorial Whitehall ministries – had administrative responsibility for those domestic policy areas which had previously been devolved.

The factors that led to the transformation of this union state into a devolved state have been analysed in greater depth elsewhere and need not concern us here (for broad comparative overviews see Bogdanor 1999; Keating 2001; 2009; Mitchell 2009; Jeffery 2011). However, the working of the UK as a 'union-state' prior to devolution has shaped the nature of the devolved 'settlements' that came into force in 1999, as well as the character of intergovernmental relations in the UK, in at least three distinctive ways.

Firstly, the asymmetry that was a hallmark of separate administrative and representational arrangements in the pre-devolution era shaped the nature of UK devolution. Different levels of self-rule apply to Northern Ireland, Scotland and Wales, and at least at the point of 'departure' in 1999, the policy areas in which self-rule emerged were broadly congruent with the areas that had previously been the responsibility of the territorial offices. Scotland received extensive *legislative and administrative autonomy* in all areas not expressly reserved to the Westminster parliament. As such, the Scottish Parliament enjoyed autonomy over a wide range of policy areas, including expenditure heavy arenas such as health and education. Devolution in Northern Ireland was more extensive in some respects, including more policy competence, for example, over social security and energy, and a separately organised civil service (albeit that the Northern Irish Civil Service closely resembles its UK cousin in its non-partisan ethos, career structure, pay and grading arrangements [Parry 2012: 294]). The

more politically sensitive fields of policing and justice, however, were not devolved until 2010. In addition, Northern Irish autonomy has to be exercised within a compulsory power-sharing (consociational) arrangement between nationalists and unionists. The form of devolution granted to Wales was markedly weaker. From the outset, the National Assembly for Wales lacked new law-making powers; Welsh primary legislation still had to be routed through Westminster. Devolution has been gradually deepened in Wales since 1999, and following the referendum in 2011, the Assembly can now pass laws in 20 designated broad fields, without the need for Westminster approval. Last, but not least, as there never had been an 'England Office' to separately administer government in England, England remained without self-rule altogether. Devolution has thus not only maintained the UK's asymmetry, but reinforced it.

Secondly, most observers agree that neither the union state, nor the devolved state which succeeded it, is federal, but some note that it posseses some federal features (Watts 1998; Swenden, 2006; Tierney 2008; Keating 2012; for a summary of the debate, see McLean and McMillan, 2005: 7-9). In strictly legal terms, UK parliamentary sovereignty remains intact. The devolved powers are not constitutionally entrenched. Unlike in a federation, the new UK Supreme Court cannot test the legality of UK parliamentary acts with the Acts granting self-rule to the devolved territories, but it can test the compliance of *devolved* legislation with these Acts (Hazell 2006; Trench 2012). On the other hand, self-rule to the devolved territories was subject to a popular referendum, and by convention the UK Parliament does *not* amend the Acts on the basis of which devolution was granted *without* the approval of a concurrent majority in the affected devolved legislature. The repeated suspension of devolution to Northern Ireland between 1999 and 2006 is no real exception to this rule insofar as it carried the consent of the Northern Irish government and parliament which failed to put the

consociational requirements of the Good Friday Agreement into practice. Moreover, the 1998 Good Friday Agreement[i] - which paved the way for devolution to Northern Ireland - explicitly recognised that sovereignty over Northern Ireland would be shared with the Irish Republic. On constitutional issues, it noted that:

> it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland (Good Friday Agreement, s.2, para. 1.ii)

The UK is less ambiguously *not* federal in another regard: the absence of shared rule. Following devolution, the territorial offices were 'downgraded' in size and political importance, reflecting the transfer of power from the Westminster parliament and government to the devolved legislatures and administrations. These 'home-grown' governments could claim to speak for Scotland, Wales or Northern Ireland more than the territorial offices ever could, and the latter lost status in Whitehall as a result. Although they could occasional facilitate intergovernmental liaison between Whitehall and the devolved administrations, the latters' preference from the outset was for direct negotiation with the non-territorial Whitehall departments. However, a genuine 'shared rule' dimension, which would systematically involve devolved administrations in core central decisions affecting devolved interests, is largely missing from the UK framework of devolution. Shared rule is a core feature of federal systems (Elazar 1988; see also Hooghe, Marks and Schakel 2008). In fact, in the UK increased self-rule has arguably been accompanied by a reduction in shared rule. The same route might not have been taken had there been a concurrent transfer of competencies to an English Parliament or a set of English legislatures, similar to the process underpinning the regionalization of Spain (see the contribution by Colino et.al. in this volume). Arguably, the combination of *de facto* entrenched self-rule affecting a limited

proportion of its population with a limited degree of shared rule puts the UK devolved territories in a position that is not too dissimilar from that of federacies.

Thirdly, relations between the territories of the UK in the pre-devolution era were not absent, but they took the form of 'intra-governmental relations' between the Cabinet Office, other Whitehall departments *and* the territorial offices of state. The *'concordats'* governing this information exchange between the territorial and functional Whitehall departments served as a template for the intergovernmental (vertical) coordination mechanisms between Whitehall and the devolved administrations since 1999. Hence, the post-devolution concordats, the Memorandum of Understanding, and Devolution Guidance Notes can be understood as 'path-dependent' instruments for intergovernmental coordination. As such, they applied the process of information exchange, representation and co-operation which existed between the territorial offices and the relevant functional departments in Whitehall *prior* to devolution to the relationship between the latter and the devolved administrations after 1999 (Poirier 2001: 150).

3. Nature of Intergovernmental Machinery and Modes of Coordination

Modes of intergovernmental coordination concern the processes and practice of how relations are conducted between central and sub-unit governments. Bolleyer, *et al.* (introduction, this volume) hypothesised that the constitutionally weaker position of units in regionalized systems lend themselves more readily to bilateral modes of intergovernmental co-ordination. Multilateral intergovernmental co-ordination may be further inhibited where the structure of regionalised government is asymmetric. We might expect, then, that the UK's highly asymmetric and non-federal structure would not be conducive to the emergence of a strong multilateral intergovernmental framework.

The Machinery of IGR

Multilateral coordination bodies are not entirely absent from UK IGR. The Memorandum of Understanding (MoU), which underpins relations between the UK and devolved governments, made provision for a Joint Ministerial Committee (JMC). The JMC was to meet annually in plenary format, bringing together the UK Prime Minister, Deputy Prime Minister, the Secretaries of State in the territorial offices and First Ministers of the devolved territories. More regular JMC meetings were anticipated in functional formats bringing together the relevant UK and devolved ministers holding a particular policy portfolio. In the early years of devolution, however, JMC meetings had little significance and largely fell into disuse. Prior to 2007, the JMC met only three times in plenary format and functional sessions (for instance on health, or the knowledge economy) were convened very infrequently (Trench 2004: 514; Trench 2007: 167). One functional format – the JMC (Europe) - was an exception to this rule. It had its origins in a pre-devolution interdepartmental committee whose goal was to formulate the UK's negotiating line vis-à-vis the EU. Under devolution, relations with the EU (which are classed as foreign policy) are a competence of the Westminster institutions, but since many Europeanized competences impinge upon devolved policies (e.g. agriculture and fisheries, environment), the need to coordinate the UK position in advance of meetings of the Council of the EU remains evident (MacPhail 2008).

Aside from the JMC (Europe), the formal process of intergovernmental diplomacy may have been little used. However, even during the early years, inter-ministerial meetings did sometimes take place outside of the formal JMC framework. For example, agricultural ministers met regularly, especially at times of crisis (e.g. during the outbreak of Foot and

Mouth Disease). The so-called 'Finance Quadrilaterals' continue to bring together finance ministers from the devolved governments with Treasury ministers (Gallagher, 2012: 201).

Following the emergence of greater party incongruence after 2007, and pressure from the newly elected devolved administrations, the mode of intergovernmental relations became moderately more institutionalised, with more use of formal multilateral fora. In addition to a continuation of the Joint Ministerial Committee in its European format, plenary JMCs have been convened annually since 2008, usually chaired by the Prime Minister, and a new JMC (Domestic), usually chaired by the Deputy Prime Minister, has been meeting twice a year to discuss non-EU issues.

A final multilateral body is the British-Irish Council (BIC) which surpasses the scope of the UK-state, but nonetheless brings all the devolved and UK actors together. Apart from the UK, Welsh, Northern Irish and Scottish governments, the Council is made up of government representatives of Ireland, the Isle of Man and the Channel Islands (Guernsey and Jersey). At the summit level (heads of government) it meets annually, but it also convenes at lower levels (ministerial or sectoral and administrative). Although it grew out of the Good Friday Agreement, the BIC continued its operation even when devolution to Northern Ireland was suspended for most of the time between 2002 and 2007 (Birrell, 2012: 277). It is less hierarchical than the Joint Ministerial Committee - meetings are chaired by the host government, not necessarily by the UK government - and is developing a broad portfolio, but it remains mainly a symbol of co-operation and communication rather than co-decision.

Although multilateral bodies have developed to manage some intergovernmental business, they are eclipsed in importance and frequency by bilateral meetings at the ministerial and administrative level. Notwithstanding their infrequent, *ad hoc* get togethers, for example, within the co-called 'Celtic forum', the asymmetric distribution of competences, coupled

with the distinctive political systems and institutions in each case, mean that the devolved administrations rarely share common interests that would drive a structure of multi-lateral co-ordination on a horizontal basis. Bilateral UK-Scottish, UK-Welsh or UK-Northern Irish intergovernmental relations are by far the most prevalent mode of co-ordination between the devolved administrations and the UK government. In presenting evidence to an enquiry into Devolution to the House of Commons Justice Committee in 2008, Jack McConnell, Scottish First Minister between 2001 and 2007, defended the prevalence of such bilateral relations in the following terms:

> one of the reasons why the JMCs were effectively, in terms of meetings, abandoned by agreement between myself and the [UK] Prime Minister, was that we wanted to create much stronger relationships, bilateral relationships between the individual departments in devolved Scotland and the individual departments of Whitehall, and it was certainly the case between 2003 and 2007, that the relationship between my Justice Minister and the [UK] Home Secretary or between our Transport Minister and the [UK] Transport Secretary and so on, were significantly stronger and far, far more productive than they would have been if we had continued to have an amorphous discussion through JMCs or deal with everything simply through a Secretary of State for Scotland (HCJC, 22 April 2008).

However, given the asymmetry inherent in UK devolution, the frequency of these bilateral UK-devolved meetings differs, depending on which devolved territory is involved. All devolved governments engage in intergovernmental relations – for example, to integrate policies where necessary, confront policy interdependencies, settle cross-border issues or alleviate conflicts of interest resulting from policy – but the *relatively* dual blueprint of devolution in Scotland and (when not suspended) Northern Ireland may reduce the need for frequent high level intergovernmental coordination. By contrast, the highly co-operative design of the Welsh devolution settlement necessitated intense bilateral intergovernmental contact. The Government of Wales Act (1998) entrusted Wales with the power to make delegated legislation within the framework of existing primary legislation passed at Westminster. Through TFOs (Transfer of Function Orders), the UK Secretary of State for

Wales and the Welsh Affairs Select Committee of the UK Parliament could transfer executive functions and subordinate legislation to the National Assembly. Therefore, and unlike in Scotland and Northern Ireland, from the outset the Welsh settlement generated a context in which close collaboration between the Welsh Office, the Secretary of State for Wales, Welsh MPs and Welsh Members of the Assembly (AMs) was mandatory for the system to work. The Government of Wales Act (2006) increased the level of autonomy of the Welsh Assembly, but it did not remove the need for intense bilateral co-operation. The Act gave the National Assembly of Wales the right to pass primary legislation, but this still required the prior consent of the UK government and/or parliament. Under a so-called intergovernmental (or bottom up) route, the Welsh National Assembly had to initiate Legislative Competence Orders (LCO), requesting Westminster to delegate power to the Assembly so that it could take 'measures' in 'matters' within the twenty designated policy fields. This route was intergovernmental because an LCO had to be passed to the Secretary of State for Wales prior to being sent to Parliament. The second, inter-parliamentary route allowed the UK Parliament, through a parliamentary act, to delegate legislative powers to the National Assembly for Wales and by doing so to insert a particular matter into the list of policy fields. Thus, the devolved institutions in Wales were institutionally highly dependent upon Westminster and the Welsh Office for the exercise of their law-making powers.

Co-operation or Conflict?

Intergovernmental relations in the UK are hierarchical. Not only does constitutional supremacy rest with the Westminster parliament, but the Westminster government also retains significant reserved powers which can impinge upon devolved competence, and crucially, it is the source for most of the devolved governments' revenue. Although this comes in the form of a formula-driven, and thus non-negotiable, unconditional transfer,

intergovernmental tensions can emerge over the implementation of this formula as well as over what Trench referred to as 'second order issues' concerning the means by which the devolved administrations might access additional resources from the Treasury (Trench 2008: 81).

In the first eight years of Scottish and Welsh devolution (devolution was suspended during much of this time in Northern Ireland) IGR were broadly co-operative. Few intergovernmental disputes emerged either bilaterally or within multi-lateral forums. The Joint Ministerial Committee did not even devise a dispute resolution mechanism, let alone meet to resolve disputes, until 2010. It would be reasonable to assume that co-operative IGR was facilitated by the prevalence of the Labour Party in government across mainland Britain from 1999-2007. Whether in Westminster or the devolved arenas, the Labour Party broadly shared policy and political agendas, minimising the likelihood of conflict emerging, while personal links and friendships helped to ensure mutual trust, and facilitate inter-ministerial negotiation and compromise when necessary.

Conflict was not entirely absent during this period, however. For example, the UK Labour government showed its discomfort whenever the Scottish Executive seemed to outflank it on public service provision, for example, in abolishing up-front tuition fees, introducing free personal care for the elderly, or offering a more generous compensation scheme to Scottish victims accidentally contracting the Hepatitis C virus after receiving contaminated blood (Cairney, 2006). But however contested these issues may have been, the Scottish Executive was never prevented from proceeding with its own policy, and agreements were found behind closed doors where necessary.

Similarly, the UK government did not prevent the National Assembly for Wales introducing free prescription charges, free breakfasts in primary schools, free entry to museums and galleries and bus travel for 16 to 18 year olds at reduced rates – all of which

deviated from the UK Labour government's policies for England. This is especially notable in the Welsh case given the institutional dependence of Welsh devolution, and the rhetoric with which such policies were pursued. The Welsh Labour First Minister, Rhodri Morgan, underlined his government's intention to draw 'clear red water' between its agenda and the 'New Labour' agenda of the UK government (BBC, 11 Dec 2002), although this rhetoric was arguably aimed more at appealing to the Welsh electorate than irritating ministerial colleagues at Westminster.

The institutional dependence of the Welsh institutions on the UK government and parliament did create some tensions and frustration, even during periods of predominant party congruence. For such dependence to be manageable, it would have required shared rule mechanisms to ensure the preferences of the devolved institutions could be conveyed within the central authorities. Yet, as noted above, such mechanisms were largely absent. A House of Lords report on inter-institutional relations lamented liaison over legislation as 'unsystematic, almost random, highly opaque… with limited opportunities for the National Assembly's views to be heard in connection with bills affecting the assembly' (House of Lords, 2002: 36; see also AWCR 2009). The 2006 Government of Wales Act, discussed above, exacerbated the problem by giving effective veto powers to Welsh MPs in scrutinising legislative orders emanating from the National Assembly. The Presiding Officer of the National Assembly for Wales reportedly wrote to the Secretary of State for Wales to complain about the obstructionist approach and 'anti-devolution sentiments' of the Welsh Affairs Select Committee (a majority of whose MPs were then from the Labour Party) when considering and scrutinising these legislative orders (Chaney, 2009). Difficulties were aggravated by tensions and power struggles within the Wales Labour Party, between those representing the party in the Assembly and (some) Labour Westminster MPs. The Welsh-UK

bilateral relationship was thus not only more unequal than the Scottish-UK relationship, but also somewhat more fractious.

Predominant party congruence in the political composition of the UK's governments gave way to a gradual increase in party incongruence after 2007, most notably in Scotland in the wake of the SNP's election victory, followed by total incongruence after the election of the Conservative-Liberal Democrat coalition in 2010. This was accompanied by deterioration in intergovernmental relations, but the extent to which this occurred should not be exaggerated. The new Westminster government entered office with the promise of respecting the authority of the devolved administrations – the so-called 'respect agenda'. However, Wyn Jones and Royles (2012: 263-4) noted a 'marked deterioriation' in the Welsh-UK intergovernmental relationship since 2010, with (Labour) Welsh ministers more assertive and critical of their Westminster counterparts, especially on issue of finance and public expenditure cuts. The SNP-led Scottish government also adopted a more assertive strategy in IGR, seeking to reap the political benefits of 'standing up for Scotland', but by and large, they played by the rules. Hence, when negotiating with the UK government on a UK position in Europe, the SNP agreed not to disclose to anyone, not even the Scottish Parliament, what disagreements they may have had with the UK government over the formulation of its policy (Cairney, 2012: 237). Doing so would have put at risk the access the Scottish government has to Whitehall, which under UK devolution arrangements is a privilege not a constitutional right. Moreover, all of the devolved administrations, to varying degrees, rely upon the policy capacity of Whitehall. The divergences in policy which often accompany party incongruence have created some strains in relationships between UK ministers and their Scottish and Welsh counterparts especially since 2010, but the effect should not be exaggerated and inter-personal relationships matter too; according to officials (interview), a change of minister can have as much if not more impact than a change of government.

The asymmetry in the power relationship between the UK and Scottish government is at least one of the factors contributing to the continuation of relatively smooth intergovernmental relationships even in the context of party incongruence. However, several institutional features also play a role here. The relatively dual framework of the distribution of powers (keeping the need for intense bilateral negotiations to a minimum), UK political culture (which favours political mediation over judicial litigation) and the gluing force of the unified Home Civil Service (which provides senior civil servants in Scotland with access to their counterparts in Whitehall departments) have also played their part in keeping the UK-Scottish bilateral relationships on an amicable footing (for further analysis of the effects of these features on UK IGR, see McEwen *et al*., 2012). The SNP's minority status in government between 2007 and 2011 may also have contributed, preventing them from making progress on some issues – the independence debate chief among them - which may have posed difficult intergovernmental challenges. The SNP government's majority status since 2011 poses no such barriers, as discussed below.

2007 also marked the resurrection of devolution in Northern Ireland. Its distinctive party system and concosiational arrangements mean that UK-Northern Ireland relations are conducted within a context of permanent party political incongruence. The relaunch of devolution in Northern Ireland coincided with a polarisation of politics, with the two most radical parties within the unionist and nationalist camp – the Democratic and Unionist Party and Sinn Féin – emerging as the largest parties, assuming the First Minister and Deputy First Minister roles. This might have created added challenges in relations with the UK government before and after 2010; both the Conservatives and the Labour Party have stronger links with their more moderate rivals. It should be noted, however, that while Northern Irish-UK IGR are conducted on a similar informal and hierarchical basis to IGR elsewhere in the UK, Northern Ireland is unique in also being engaged in more formal north-

south intergovernmental arrangements with the Republic of Ireland. A notable feature of intergovernmental relations in Northern Ireland has been the preference for unionist ministers to engage in bilateral contacts with their UK counterparts, while nationalist ministers are more keen to engage directly with the Irish government (Birrell, 2012: 275).

As a former official once intimately involved with the process of intergovernmental relations noted, such relations and disputes are often about the money (Gallagher, 2012: 206). Indeed, it is difficult to disentangle the effect of party congruence and incongruence for the prevailing budgetary climate. Party congruence coincided with very favourable fiscal transfers to the devolved administrations. Party incongruence, meanwhile, has emerged amid a changed fiscal environment, emanating from the economic downturn and the deficit and debt reducing priorities of the UK government elected in 2010. The latter's deficit-reduction agenda has placed a strain on relations between the UK government and all of the devolved administrations. UK public expenditure cuts have considerable repercussions for the devolved governments, given the existing mechanisms for funding devolution. Cuts imposed on programmes which affect only England have a direct consequence on the size of the fiscal transfers to the devolved administrations.

In this new fiscal environment, the devolved governments have appeared more willing to work together to oppose the UK government, as was seen in their joint declaration calling on the government to scale back its planned public expenditure cuts in the devolved territories. Working within the Joint Ministerial Committee, they also invoked the aforementioned protocol on dispute resolution in a grievance about the categorisation of spending on transport and regeneration in preparation for the 2012 Olympic Games. Because this spending was classed as outside of the usual financial framework, it did not automatically lead to additional funding for the devolved administrations (via the Barnett formula), prompting delicate negotiations between officials from the different administrations which

eventually led to inter-ministerial agreement. Nonetheless, asymmetry ensures that there remain few issues around which the devolved administrations can find common cause, and bilateral intergovernmental relationships remain the order of the day.

4. Long term Evolution of the Multi-Level System

The asymmetric features underpinning the mode of intergovernmental coordination also feed into the long term evolution of the multi-level system. In the introduction, it was hypothesised that sub-units whose status is constitutionally equal are also keen to be treated equally, generating symmetry of competence allocation in the long run. On the other hand, sub-units which lack equality of status will try to use whatever resources they have to get the most out of the centre, implying the long term perpetuation of asymmetry. We find confirmation for this hypothesis in the UK case.

Scotland: from devolution to independence?

Of the three devolved territories, Scotland is the strongest in terms of its resource strength: it has the largest population; it is the wealthiest in terms of per capita Gross Value Added (which is close to that of England even without reference to the revenues which flow from the North Sea [ONS, 2012]); it is abundant with natural resources (oil, gas and renewables); and it has distinctive policy communities in education, health and the legal system which long pre-date devolution but have been strengthened by it. Furthermore, most Scottish citizens strongly identify with the Scottish nation, more readily so than with Britain. This is also reflected in the distinctive nature of the Scottish party system, in which since the late 1980s,

the Conservatives have become a marginal player and Labour and the Scottish National Party (SNP) have been locked into an intense struggle for power.

During the first eight years of devolution, the Labour Party dominated both Westminster politics and led a coalition government (with the Liberal Democrats) in Scotland. As the party that introduced devolution, the priority for government north and south of the border was to make devolution work. For the most part, this meant working within the existing constitutional settlement, though through bilateral negotiations with the UK government, the Scottish Executive (as government was then called) obtained a transfer of executive functions from the UK Department of Transport in railway policy (except for safety matters and the licensing of railway operators). By contrast, the SNP's central objective is to maximise and extend Scottish self-government and, ultimately, secure a future for Scotland as an independent state. The creation of the Scottish Parliament provided the SNP with an institutional platform on which it could more easily channel its demands for Scottish self-government and independence even in opposition. In government, the party kick-started a new process of constitutional reform. This has already led to a re-allocation of powers from Westminster to the Scottish Parliament (see Scotland Act [2012]), and at time of writing, we await the outcome of a referendum on Scottish independence, to be held in autumn 2014.

Following the SNP's victory in the 2007 Scottish Parliament elections, the party in government launched a 'National Conversation' on Scotland's constitutional future. In response, the opposition parties (Labour, Liberal Democrats and Conservatives), backed by the UK party leaders and the UK Labour government, set up a commission to review the 1998 settlement. The commission's main recommendations, which focused on enhancing the fiscal accountability and autonomy of the parliament, were largely reflected in the 2012 Scotland Act, which represented a moderate strengthening of the original devolution settlement. The debate, however, has already moved on in the wake of the SNP's convincing

victory in the 2011 Scottish elections. In addition to the SNP's platform of independence, organisations within civil society and some politicians have championed a variety of forms of enhanced devolution which would lead to a further re-allocation of competences.

Although the constitution is a reserved matter under the 1998 Scotland Act and the UK parliament has explicit sovereignty on these issues, in practice, the UK government has committed to not altering the devolution settlement without the express consent of the Scottish Parliament. The UK government also recognised that the SNP's election victory in 2011 gave the latter a legitimate mandate to hold a referendum on independence. While stressing its belief that independence would not be in the best interests of Scotland or the rest of the UK, a joint statement by the Prime Minister and Deputy Prime Minister noted: 'we will not stand in the way of a referendum on independence: the future of Scotland's place within the United Kingdom is for people in Scotland to vote on.' (Scotland Office, 2012: 5). Yet, they also insisted that it be 'legal, fair and decisive', and agreed a temporary transfer of legislative competence to the Scottish Parliament to put any referendum legislation beyond legal challenge. This was not unconditional. In the eyes of the UK government, a 'legal, fair and decisive' referendum meant 'a single, straightforward question', clear rules and independent oversight. In effect, this meant that the Scottish Government could not pursue the option of holding a two question referendum, including enhanced devolution on the ballot paper.

Although the long term constitutional trajectory of Scotland and the bilateral way in which it is pursued is in line with the 'regionalized' scenario, the UK tolerance for a Scottish referendum on the issue is not. In Spain, both the Constitutional Court *and* the PSOE central government prevented the Basque Country from holding a referendum on the issue in October 2008, and the government of the Partido Popular appear similarly intransigent in the face of Catalan demands for a referendum. Even in strongly decentralized federal Canada, the

federal government's reference to the Supreme Court, made in the wake of the narrowly defeated referendum on Quebec sovereignty in 1995, sought to limit the capacity of Quebec to secede from the federation. The pragmatic approach of the UK government may of course partly reflect its confidence (based on polling) that an independence referendum will be defeated. It is notable, however, that the agreement on the transfer of legislative competence - dubbed 'the Edinburgh Agreement' - committed the two governments, in spirit if not in law, to respect the outcome of the referendum whatever it may be, and work co-operatively in so doing (HM government/Scottish government, 2012).

Wales: from administrative autonomy to legislative devolution

In the wake of the 2003 elections, the then Welsh First Minister Rhodri Morgan's popularity among Welsh Labour party members, grassroots and the electorate gave him the political legitimacy and strength to force a profound review of the Welsh devolution settlement under the Government of Wales Act (1998, revised in 2006). Despite representing the Labour Party, Morgan advocated a neo-nationalist' (Keating 2009) agenda. Welsh Assembly secretaries were renamed as ministers and referred to themselves as the Welsh Assembly Government as early as 2000 and 2002 respectively, heightening the similarity with a conventional government. (Paradoxically, the Scottish Executive did not call itself a government until 2007). The revised Government of Wales Act formally and legally separated the National Assembly for Wales and the Welsh Assembly Government, and also entrusted the former with the potential of legislative powers.

The Welsh elections in 2007, after which the Government of Wales Act entered into force, also produced a coalition government between the two largest parties, Labour and Plaid Cymru, a nationalist party which campaigns for Welsh self-government. The coalition agreement ensured the establishment of an 'All Wales Convention' with a view to preparing a

referendum on full legislative Assembly powers. Simultaneously a commission was established to consider tax-raising powers for the Welsh assembly. The decision to hold a referendum, unanimously supported by the National Assembly for Wales, was recognised by the incoming UK government elected in 2010, in spite of the Conservatives earlier reservations on primary legislative powers for Wales. The referendum produced a comfortable majority in favour of law-making powers - 63.5% voted 'Yes', albeit on a turnout of just 35.6% (see Wyn Jones and Scully, 2012) – leading to a transfer of legislative autonomy in 20 broad fields over which the Assembly government had enjoyed executive competence since 1999, including education, health care, housing, transport, agriculture, environment and culture. The process of constitutional reform is ongoing in Wales. In October 2011, the UK Secretary of State for Wales agreed to set up a commission (commonly known as the 'Silk Commission' named after its chairman Paul Silk). It serves a double purpose: to examine whether and how to strengthen the National Assembly's fiscal autonomy (including borrowing powers); and to review the powers of the National Assembly for Wales 'in the light of experience', making recommendations for a further re-allocation of competences.

These seemingly parallel processes in Scotland and Wales in fact have very little cross-over. Developments in Scotland are noted in Wales and do influence the nature of the debate. Changes to the Scottish constitutional settlement could have indirect implications for Wales' position within the Union, and especially its capacity to access and influence the UK government in the intergovernmental arena. Campaigners for change have sought to place Welsh devolution on an equal footing with Scottish devolution. In this respect, the process of constitutional reform resembles the dynamic – captured by the phrase *café para todos* - observed by scholars of Spanish territorial politics, where constitutionally weaker autonomous communities have sought to catch up with the leading historic nations by gaining

greater competences, thus diminishing asymmetry (Giordano and Roller, 2004). But it is not quite a case of 'tea for everyone' in the UK. Developments in Wales go largely unnoticed in Scotland, where the debate over constitutional change is predominantly an internal one with its own dynamic. Meanwhile, the brief flirtation with a weak form of administrative regionalism in England has passed, and there is little prospect of elected devolved assemblies either within the English regions or for England as a whole. English regional devolution has been overtaken by a centrally-driven cities agenda, generating a piecemeal and asymmetric system of directly elected mayors in some parts of England. Asymmetry, it seems, is set to continue.

Northern Ireland: Making power-sharing work

In some sense, the Northern Ireland settlement has been the least subject to change. The priority, instead, has been to solidify the peace process by ensuring that parliamentary politics replace the extra-parliamentary and paramilitary activity that dominated Northern Ireland in the period of 'Direct Rule'. Following the suspensions that beset the early years of devolution, that the Assembly has now been running without suspension since 2007 is a significant achievement. In 2010, this success was recognised in an intergovernmental agreement, approved by both parliaments, to transfer legislative control over criminal justice, the courts and policing to the Northern Ireland Assembly. This transfer of powers was always envisaged in the Good Friday Agreement and the 1998 Northern Ireland Act, the legal foundation of the devolved institutions, and was described by then Secretary of State for Northern Ireland as the completion of the UK government's responsibilities in the peace process and a means to enable the Assembly 'to complete its arrangements for full devolution' (quoted in the Guardian, 22 March 2010). Although Northern Ireland now has the most extensive form of devolution in the UK, whether this should be considered 'full'

devolution is open to debate. The Executive's 2011 Programme for Government included a commitment to press for the devolution of corporation tax to enable a reduction in tax levels so as to compete on a level playing field with the Irish Republic. Intense bilateral intergovernmental negotiations with the UK Treasury have yet to reach agreement.

5. Conclusion

The UK conforms most closely to a regionalised system; sovereignty rests with the UK parliament, it is not shared with the parliaments and assemblies in Scotland, Wales or Northern Ireland. Their assemblies' powers are devolved – derived from Westminster statute. They are not entrenched. The UK is also profoundly asymmetric, more so than even other regionalised states. 'Regionalism' extends only to Scotland, Wales and Northern Ireland, geographically on the periphery of the state – the English 'core' is governed by a parliament which serves simultaneously England and the UK as a whole. As expected by the first hypothesis in the introduction, these institutional features go some way to explaining the mode of intergovernmental coordination, which is less formal than in most federal and confederal contexts, and more prone to bilateralism than multilateral engagement. Bilateralism also contributes to perpetuating and reinforcing the asymmetric logic of the UK devolved system in the long run, as anticipated by the second hypothesis in the introduction.

UK IGR is conducted 'in the shadow of hierarchy'. In the context of any intergovernmental dispute, the UK government has the upper hand. It enjoys significantly greater policy capacity; it holds the purse strings in relations to territorial finance; it manages the Joint Ministerial Committees, and chairs its meetings; and it has constitutional supremacy over the devolved territories. Yet, this is not an entirely accurate portrayal of IGR in the UK,

and requires several qualifications. First, while financial resources do lie with the UK Treasury, the formula-driven system of territorial finance minimises (without eradicating) the need for negotiations to secure financial settlements. Second, although the Westminster parliament does retain constitutional sovereignty, successive UK governments have largely stuck to the convention that they will not act in the devolved arena, or reallocate constitutional competences, without the explicit consent of the devolved territories, expressed either through parliamentary approval or a referendum. Finally, UK governments have been reluctant to flex their constitutional muscle against the devolved nations for fear of losing electoral support and legitimacy among their electorates.

Nonetheless, it might be expected that both the mode of intergovernmental coordination and the process of competence re-allocation might be affected by party competition. The UK, after all, is often characterised as one of the most adversarial systems in Europe, with intense rivalries between competing political parties. That competitive culture may be played out vertically, affecting the relations between governments when they are led by opposing parties. The introduction to this volume hypothesised that this effect would be felt more acutely in federal states, where the constitutional competences of territorial units are entrenched and relations less hierarchical. In regionalized states, by contrast, where the balance of constitutional power is tilted towards the central authority and the latter would in theory be in a position to withdraw competences or resources to recalcitrant territorial units the effect of party incongruence on intergovernmental relations may be more muted.

In practice, in the UK, the mode of intergovernmental coordination has seen some modest changes since party incongruence became more prominent. Formal multilateral processes are used a little more frequently, and some intergovernmental tensions have emerged. Bilateralism still prevails, however, and thus far at least, disputes have been resolved through negotiation and compromise, whether over issues of territorial finance or constitutional

futures. We cannot conclude that this is simply a result of the UK's structure as a regionalised state. There are other institutional features, most notably the culture and organisation of the Home Civil Service, and the absence of a politicised judiciary, which also play a part. Politics matters too. Neither the UK government nor the devolved governments have seen political benefits in a path which priorities conflict over cooperation in the intergovernmental arena.

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[i] The Good Friday Agreement – also known as the Belfast Agreement – was endorsed by most of the political parties in Northern Ireland (excluding the Democratic Unionist Party) and incorporated an international treaty agreement between the UK and the Republic of Ireland. Among other matters relating to the peace process and the cessation of armed conflict, it set out the principles upon which devolution would work, and recognised the legitimacy of both the unionist desire to remain within the UK and the nationalist goal of a united Ireland.