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Still better together? Purpose and power in intergovernmental councils in the UK

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ABSTRACT

Intergovernmental relations in the United Kingdom were intended to be predominantly informal, but a machinery of intergovernmental councils (IGCs) developed alongside informal relations. This article examines the development, purpose and dynamics of the UK's IGCs, with a particular focus on the multilateral Joint Ministerial Committee and the bilateral Joint Exchequer Committees. These IGCs remain weakly institutionalized and multilateral forums, in particular, are regarded by the devolved governments as providing limited opportunities for exercising influence. By contrast, bilateral IGCs have enabled devolved governments to utilize a range of non-constitutional resources to exert influence, irrespective of their relative constitutional weakness. The Brexit referendum generated an intensification of multilateral IGCs while exposing their weaknesses as forums for the exercise of shared rule. The purpose and dynamics within IGCs are shaped by the asymmetrical distribution of power, continued constitutional hierarchy, party competition and competing nationalist projects.

KEYWORDS UK; devolution; intergovernmental relations; JMC; JEC; Brexit

Introduction

The United Kingdom is a relative newcomer to multi-level government. For much of the twentieth century, it was one of the most centralized states in Europe, save for a period of devolution in Northern Ireland between the partition of the island of Ireland in 1921 to the imposition of direct rule in 1972. The introduction of devolution to Scotland and Wales in 1999 following successful referenda, and its simultaneous, if sporadic, reintroduction to Northern Ireland as part of the peace process,¹ institutionalized varying degrees of self-government to these three territories. England, by far the largest nation of the UK, has continued to be governed by the state-wide institutions, and the absence of devolution in England has created a profound constitutional asymmetry in the structure of the state. This, coupled with the distinctive bottom-

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up motivations which generated the demand for, and ultimately the concession of, varying degrees of self-government, helps to explain why formal inter-governmental relations have at best been an afterthought in the UK's multi-level system.

Intergovernmental relations between the UK and the devolved governments were intended to be mainly informal. Good communication, goodwill and mutual trust were valued above developing mechanisms and forums for formal coordination. A Memorandum of Understanding, a series of concordats between the devolved governments and the departments of the UK Government, and a set of 16 Devolution Guidance Notes were to support a cooperative working culture among civil servants on a day-to-day basis. In keeping with UK parliamentary tradition and its central tenet of Westminster parliamentary sovereignty, none of these agreements (excepting the Good Friday Agreement) has statutory authority and none is binding in law, though Poirier described them as 'soft law instruments, with a slightly harder edge' (Poirier, 2001: 155; see also Rawlings, 2000).

Despite the emphasis upon informality, a machinery of multilateral and, more recently, bilateral intergovernmental councils (henceforth IGCs²) has nevertheless developed to facilitate communication, cooperation and constitutional reform. In Bolleyer's terms, these IGCs remain weakly or, in some cases, moderately institutionalized (Bolleyer, 2009). Meetings are mainly irregular and unscheduled, the infrastructure supporting them is often rather ad hoc or minimal, and the IGCs usually lack the capacity to make decisions. The council which represents the centrepiece of UK IGR – the multilateral Joint Ministerial Committee (JMC) – rarely met at all in the early years of devolution (Trench, 2004, 2007). The last decade, however, has witnessed a change. Against the backdrop of increased party political incongruence in the composition of central and devolved governments, a shift from a benign financial settlement to fiscal austerity, and the onset of 'big' constitutional politics – from the Scottish independence referendum to the Brexit referendum – we have seen increasing attention paid to the formal processes of intergovernmental relations. These developments have heightened demands from parliaments, devolved governments and independent commissions for more institutionalized multilateral and bilateral intergovernmental processes (Commission on Devolution in Wales, 2014; Smith Commission, 2014; HL CC, 2015; Welsh Government, 2017).

This article examines the development and dynamics of the UK's IGCs. It asks two key questions: (i) what is the purpose of the UK's IGCs?; and (ii) do they provide channels of meaningful influence for the devolved governments? In addressing the first question, the article looks beyond merely the stated purpose set out in official remits to consider the motivations underpinning the activity and interventions of the governments concerned. In addressing the second question, it examines the power dynamics within IGCs and

questions whether they provide devolved governments with an opportunity to upload their preferences or secure concessions in line with their territorial and policy objectives. After examining the evolution, purpose and power dynamics within multilateral and bilateral IGCs in the UK, the article incorporates a small case study analysis of formal intra-UK intergovernmental relations during the first phase of the process leading to the UK's withdrawal from the European Union, that is, from the referendum to the triggering of Article 50. The period was marked by an intensification of formal IGR, including new multilateral IGCs, while its political salience, the candour of some participants, and parliamentary oversight helped to shine a light on these otherwise opaque processes.

Documents form the primary data underpinning the analysis. These include official communiqués, government publications, intergovernmental agreements, ministers' and ex-ministers' speeches, parliamentary committee reports, and the testimony that those involved in intergovernmental relations have provided to various parliamentary enquiries. These are supplemented by informal interviews with officials and ministers. Given the sensitive and confidential nature of IGR and in the interests of encouraging interviewees to speak openly so as to gain maximum insight, interviews were unrecorded and conducted with the assurance that contributions would be unattributed.

The article argues that constitutional asymmetry has constrained and inhibited the development of IGCs, and governments have taken a pragmatic approach to their use. The plurinational character of the state, especially within the current context of competitive nation-building and contested constitutional politics, shapes the motivations and trust of the actors involved. The non-federal character of the state and the continued hierarchy in the constitutional relationship between the UK Government and the devolved governments affects power dynamics within IGCs, although the latter can sometimes utilize 'soft power' tools to gain concessions. Although convened in unique circumstances, the recent experiences of the Brexit-focused IGCs expose the broader weaknesses of the UK's intergovernmental machinery, as well as the barriers in the way of more formal co-decision processes.

Powers and purpose of IGCs

IGCs represent the formal executive infrastructure through which central and regional governments manage jurisdictional interdependencies. From the perspective of the participating governments, they serve a variety of purposes.

First, IGCs can be used to share or to seek information, either to promote policy learning, to avoid detrimental impact from policy overspill, or to share confidences about policy developments, upcoming events or announcements which are not yet in the public domain. This purpose is

also, and perhaps more effectively, served in less formal networks (Wright, 1982).

The second purpose of IGCs is to negotiate intergovernmental agreements or to coordinate joint action (Parker, 2014). This is especially necessary for more cooperative systems, where the powers and responsibilities of both levels of government overlap or are interlocked. Such systems build in the need to reach joint decisions or coordinate policy implementation into the institutional design, most evidently in the German case (Auel, 2014). More dualist systems, where each level of government enjoys a high degree of political autonomy, contain the need for coordination and co-decision, but do not eliminate it. Participation in such systems may be ad hoc and voluntary, as in Canada, or highly institutionalized as in Belgium (Cameron and Simeon, 2002; Poirier, 2002). The enthusiasm for, and intensity of, IGCs will also be coloured by the policy field: more limited in locally oriented policy spheres, but greater where there is more scope for overspill (e.g. environmental or trade policy), higher political salience (e.g. distributive or constitutional policy), or where implementing international agreements or meeting EU obligations necessitate cooperation (Beyers and Bursens, 2006; Benz, 2016).

Third, IGCs can provide opportunities for the exercise of shared rule, enabling sub-state governments to exert influence over matters that, directly or indirectly, affect their fields of jurisdiction. In systems without a territorial second chamber, they are often the primary forum through which sub-state governments seek to upload their own preferences so as to influence the policies, positions, actions and decisions of other governments, especially – though not exclusively – central government. The extent to which regional governments can exert influence over central government is shaped by the constitutional rules of the game, for example, whether they have rights to co-decision or veto over central government decision-making in areas that impinge upon their competences (Hooghe et al., 2016). Non-constitutional factors matter too, including the relative wealth of each order of government, the balance of power within and across multi-level systems and the political composition of governments (Bolleyer, 2009; McEwen et al, 2012; Aja and Colino, 2014). In the context of party political incongruence, when governments are led by parties that compete against each other, there may be more competition than cooperation between governments. This can result in less willingness to cooperate or make concessions, and less confidence in sharing privileged information.

Fourth, IGCs can also serve the purpose of preserving or enhancing ‘self-rule’ (Agranoff, 2004; Lublin, 2014: 261). Especially in strong identity regions, both multilateral and bilateral IGCs 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. This relates to a fifth common purpose of IGCs: to help avoid or resolve jurisdictional or financial disputes, without recourse to the courts.

The features shaping the processes and purpose of IGCs also influence the power dynamics within them. Power relations within IGCs are shaped by formal constitutional rules. The power of sub-state governments may be considerably enhanced where they have co-decision rights, voting strength or the right of veto over key policy, fiscal or treaty-making decisions. This is perhaps most obviously the case in intergovernmental decision-making in Belgium, where the principle of *in foro interno, in foro externo* has given the Regions and Communities considerable influence in determining Belgian positions in relation to trade and other international agreements which affect their competences (Beyers and Bursens, 2013). In multi-level systems like the UK, which do not formally divide sovereignty or remit powers of co-decision to intergovernmental forums, the relationships within IGCs may be more hierarchical, with central governments able to dictate the terms of engagement.

On the other hand, even in non-federal systems, regional governments may be able to at least partially mitigate constitutional inferiority by accessing non-constitutional resources and using 'soft power' diplomacy. Such non-constitutional resources can be wide-ranging. For example, a strong and skilled leader can deploy political nous in intergovernmental negotiations. A sub-state government with a strong popular mandate can bring added legitimacy to intergovernmental deliberations, especially if faced with a relatively weak central government. For example, the SNP's success in the 2015 General Election, when they won 56 of the 59 Scottish seats in the British House of Commons, considerably enhanced the SNP-led Scottish Government's claim to speak for Scotland in the intergovernmental arena.

The literature on small states, which highlights the ways in which these states can exercise influence within the international community despite their smallness, also provides insight into the 'soft power' options open to sub-state regions in the intergovernmental arena. Small states can sometimes overcome structural and resource disadvantages by developing 'counterbalancing strategies' (Panke, 2010), for example, by building alliances with other governments, honing cogent arguments, and investing in network and relationship building with policy actors in EU and international institutions (Arregui and Thomson, 2009; Jakobsen, 2009). Similarly, sub-state governments may be better placed to shape and steer intergovernmental negotiations and outcomes towards their preferences in areas of strategic priority, where they have built expertise and policy capacity within government, and have key alliances within the policy community. In addition, just as small states, through norm advocacy, framing, agenda-setting and diplomacy, can

sometimes shape policy discourse, outputs and practice within EU or international institutions (Ingebritsen, 2002; Björkdahl, 2008), so too might sub-state governments be able to influence the norms, ideas and framing of issues on the intergovernmental agenda.

Power dynamics within intergovernmental arenas may also be shaped by the alliances and antagonisms between the participating governments. Governments in multi-level states, when led by parties that compete against each other within each institutional tier, may be more inclined to regard IGCs as sites of competition rather than cooperation, shaping and constraining the capacity of sub-state governments to secure concessions in intergovernmental deliberations. Territorial politics can also be expected to shape dynamics within IGCs. In federal and multi-level states, cooperative intergovernmental relationships are dependent upon a commitment to mutual interdependence and political unity alongside the recognition of diversity (Elazar, 1987; Burgess, 2012: 188–189). Despite often being designed to stem secessionist pressures, neither a commitment to sharing power nor a desire to maintain unity can be taken for granted in states that are plurinational. Intergovernmental relations are often coloured by competitive nation-building and nationalist claims, especially when secessionist parties are in power, with a detrimental impact on relations of trust and the functioning of IGCs. For example, the Spanish Conference of Presidents stopped meeting after 2012 amid the resurgence of Catalan nationalism over fears that meetings would be politicized (McEwen et al., 2015). As discussed below, competitive nation-building in the UK after the election of the SNP to the government in Scotland in 2007 contributed to an intensification of IGR, but the issue of Scottish independence coloured the nature of the relationships within ministerial conferences, presenting both obstacles to, and opportunities for, meaningful influence for the Scottish Government.

Power and purpose of multilateral IGCs

After the establishment of devolution in Scotland and Wales in 1999, and its re-establishment in Northern Ireland, the UK Government and the devolved governments agreed a Memorandum of Understanding (henceforth MoU) and a series of Concordats intended to guide their day-to-day interaction in a new era of multi-level government. Informal interaction would also be facilitated by the retention of a unified civil service serving Whitehall departments and the Scottish and Welsh administrations, and cooperating closely with the Northern Ireland civil service (Parry, 2012). The MoU also provided for the establishment of a Joint Ministerial Committee (JMC) as a formal council within which the governments would meet, either in plenary format, involving the leaders of each government, or in functional format, with ministerial participation dependent upon the policy under discussion.

The Joint Ministerial Committee

In the early years of devolution, the JMC met only a few times in plenary and functional formats before becoming largely redundant in 2002 (Trench, 2004). It was only resurrected after the deepening of party political incongruence in the composition of governments after 2007 (McEwen et al., 2012). Thereafter, the JMC was supposed to meet annually in plenary format (JMC(P)) and when required (which was expected to be at least twice a year) in a domestic format (JMC(D)). However, it did not meet in either of these formats between December 2014 and October 2016. Difficulties in agreeing mutually convenient dates amid an intensive electoral cycle, rather than lack of will, appear to explain the failure to convene the JMC(P). By contrast, the JMC(D) was regarded as rather ineffectual and without a clear purpose, especially by the devolved governments, with officials citing asymmetrical devolution as making it difficult to identify agenda items that could engage all participants (HL CC, 2015: 18–19; interview with SG officials, 9 November 2016). The Scottish Government's first Annual Report on Intergovernmental Relations published in June 2017 noted: 'The JMC(D) has not had cause to meet since March 2013 although the option remains open to ministers to reconvene as necessary' (Scottish Government, 2017: 11).

What, then, is the purpose of the JMC(P)? Its formal remit, set out in the MoU, is (i) to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities; (ii) to consider devolved matters if it is beneficial and mutually agreeable to discuss their respective treatment in the different parts of the United Kingdom; (iii) to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and (iv) to consider disputes between the administrations (UK Government et al., 2013). The emphasis upon *consideration* is deliberate, and underlines the weakness of the JMC as a vehicle for shared rule. It was never intended to be a forum for co-decision, nor even routine coordination. The MoU underlined the governments' shared commitment 'wherever possible, to conduct business through normal administrative channels, either at official or Ministerial level' (UK Government et al., 2013: 10).

In 2010, under pressure from the devolved governments, a formal *Protocol for the Avoidance and Resolution of Disputes* was introduced and has been invoked on at least five occasions. This includes an ongoing (at the time of writing) financial dispute lodged by the Scottish and Welsh Governments over the Conservative UK Government's deal with the Democratic Unionist Party (DUP), giving extra money to Northern Ireland in exchange for the DUP's support in the House of Commons. In keeping with the ethos of the civil service and of the intentionally informal nature of UK IGR, the emphasis within the protocol is to prevent disputes from emerging, and to resolve

differences at working level or within the secretariat. The four disputes invoked under the protocol in 2010–11 were resolved without recourse to the ministerial meeting (HL CC, 2015: 14).

There is some scepticism on the part of the devolved administrations as to the effectiveness of the JMC as a forum for resolving disputes, in light of the asymmetry in intergovernmental relationships, and the dominant role of the UK Government (Swenden and McEwen, 2014). For example, the former First Minister of Northern Ireland, Peter Robinson, described the dispute resolution procedure as ‘meaningless’: ‘At the end of the day, the Cabinet Office will decide whether the Treasury was right. We do not think that is a very impartial court to take our case to’ (Robinson, 2015, Q87). A former Secretary of State for Scotland (a ministerial office of the UK Government) referred to the JMC as ‘a forum for dispute declaration, if rarely for dispute resolution’ (Moore, 2016: 11). Scotland’s Deputy First Minister, John Swinney, recalled meetings with the three devolved Administrations:

essentially saying to the UK Government, ‘We disagree with the stance you are taking on fiscal policy, so we want you to relax the fiscal disciplines’. The UK Ministers would go through that and say, ‘We have heard you but we are the UK Government. We have macroeconomic competence. This is our policy; this is what we are doing’. (Swinney, 2016, Q355)

For its part, the UK Government – while formally talking up the value of the JMC – also recognizes that it can be a forum within which the devolved governments air grievances directly to the Prime Minister (interview with UKG official, 22 November 2016; interview with former UK minister, 1 November 2016; see also evidence cited in HL CC, 2015: 17–18). Giving evidence to the Lords Constitution Committee in 2015, Alistair Carmichael, the then Secretary of State for Scotland, implicitly chastized his Scottish Government counterparts for ‘continuing to use the points of interface between the Governments as an excuse for generating grievance or friction between the Governments’ (HL CC, 2015: 14).

These insights are suggestive of an inequality of formal power within the JMC. The JMC is chaired by a UK Government minister and, after its resumption in 2007 until 2017, always met in London. Although served by a joint secretariat made up of officials from each of the governments, the primary authority for the conduct of meetings continues to lie with the UK Government. The devolved governments have complained that there is little opportunity to engage in constructive discussions on key issues of concern, due to lack of time set aside for meetings (Scottish Government, 2015). Senior ministers from the devolved governments have criticized a culture within which they are ‘brought in’ to meetings with the UK Government, instead of the JMC operating as a forum in which four administrations work together. The First Minister of Wales, Carwyn Jones, described the JMC as ‘basically a

Westminster creation that is designed to allow Westminster to discuss issues with the devolved Administrations. It is not jointly owned ... and it is not a proper forum of four Administrations coming together to discuss issues of mutual interest' (Jones, 2015: Q46).

A relationship based on hierarchy has been increasingly challenged, however, especially by the Scottish Government after the election of the pro-independence SNP. Irrespective of disparities in size, constitutional competence and sovereignty between the UK and Scottish governments, SNP Government ministers have drawn upon their status as a *national* government representing what they regard as distinctive national interests – a stance reinforced by the SNP's electoral strength after 2011 and the Conservative-led UK Government's relative weakness in Scotland. SNP Ministers posit the Scottish Government as an equal partner in its engagements with the UK Government, rather than a subordinate player. Deputy First Minister, John Swinney, stressed that effective intergovernmental machinery should be based upon 'parity of esteem' and 'mutual respect and trust' – commonly expressed sentiments among ministers and senior officials. He added: 'The UK Government and devolved administrations are equals in their areas of competence, and this should be recognised in the level of respect between them' (Swinney, 2015). All devolved governments have at various points stressed the need for 'parity of esteem', but there is a competitive, and more assertive, edge in the SNP Government's interaction with the UK Government which reflects its nationalist ambitions. Drawing on his observations as a participant in the JMC, Peter Robinson, observed these dynamics: 'To some extent, there are two devolved institutions, which recognise that they are devolved institutions, and one devolved institution that believes that it is a sovereign state and has the standing of the Government' (Robinson, 2015, Q87).

In assessing the purpose and dynamics within the JMC, it is difficult to disentangle analytically the effects of party political incongruence from the competitive nation-building associated with the independence debate, as in the Scottish case at least, the two coincided. Officials from both the UK and Scottish Governments noted that the independence issue both before and after the referendum contributed to a loss of trust and information-sharing (interview with SG officials, 8 November 2016; interview with UK official, 13 April 2017). This has affected both IGCs and less formal interactions; as one Whitehall official put it, the days when officials from both the UK and Scottish Governments could have frank discussions in a private space are gone (interview with UK official, 13 April 2017). Welsh–UK intergovernmental relations have been conducted under conditions of party political incongruence since 2010. While this has coloured their formal and informal interactions, the constitutional dependence of the Welsh Government on the UK Government to exercise its legislative power was a source of frustration even under conditions

of party congruence (Commission on Devolution in Wales, 2014; Swenden and McEwen, 2014).

The JMC Europe

A third format of the JMC was always rather distinctive. The JMC (Europe) built upon previous intra-governmental coordination between the Foreign Office and the territorial ministries. In the early years, as 'a good clearing house for colleagues in the UK Government to sort out their interdepartmental issues on European matters' (Wallace, 2017: 17), it gave the devolved governments privileged access to discussions over the UK Government's EU policy formulation. It later evolved to become a forum within which the devolved governments could have their say on upcoming issues to be discussed at European Council meetings (Wallace, 2017: 17). It did not replace informal interaction; as set out in the Concordat on Coordination of European Union Policy Issues, officials would continue to cooperate and share information as a matter of routine (Scott, 2001). But in contrast to the other JMCs, meetings of the JMC(E) were regular rather than ad hoc, conforming to the schedule of the European Council. The UK Government maintained the authority to define the UK's negotiating position in Council meetings, but it used the JMC(E) to take account of devolved government views. The JMC(E) thus provided an opportunity for some influence, especially in areas where the devolved governments could overcome their constitutional inferiority by developing strategic priorities and niche expertise, for example, in fisheries, animal welfare, region-specific agriculture and structural funds (Bulmer et al., 2006: 84–86). As such, the JMC(E) has been generally held in higher regard by ministerial participants and observers (HL CC, 2015: 19; Paun and Munro, 2015: 72–73).

However, there is little evidence to suggest that non-constitutional resources can overcome constitutional weaknesses in multilateral JMCs. Even within the JMC(E), an imbalance of power remains, derived from the UK Government's constitutional authority over EU relations. Officials within devolved governments report that meetings last around an hour and offer limited scope for discussion. Agenda items are set by the upcoming European Council agenda, with papers prepared by the relevant UK Government department. Although they are supposed to be circulated well in advance, papers often arrived late, leaving little time to consult with colleagues in relevant policy departments, or to develop a clear position in advance of meetings. There is some horizontal collaboration between devolved ministers in advance of meetings, but also a perceived hierarchy in the degree of access given to devolved governments, given the resource strength and policy capacity of Scotland compared to Wales and Northern Ireland (Bulmer et al., 2006: 86–87). The lack of follow-up after Council meetings has been a source of frustration for the devolved governments and, usually bystanders

with respect to EU representation,³ the devolved governments rarely got to know whether their preferences were taken into account either by the UK Government or the European Council (interview with SG officials, 8 November 2016; see also Paun and Munro, 2015: 73). The prospect of Brexit has already affected the JMC(E). Meetings are less frequent, Brexit overshadows its discussions, and the internal restructuring within Whitehall as a result of the creation of the Department for Exiting the European Union has had a knock-on effect on the level of resources and commitment to the JMC(E) (Scottish Government, 2017: 8–9). Although still formally part of the EU pending completion of Article 50 negotiations, the UK is now a disengaged Member State.

Multilateral IGCs beyond the JMC

The JMC is not the only IGC. Ministers and officials periodically meet in other less formal forums. One example is the so-called ‘Finance Ministers’ Quadrilateral’ (FMQ), which brings together devolved Finance ministers with a UK Treasury Minister to discuss ongoing issues of common concern. The formula-based system of territorial finance and the absence of a system of equalization limit the need for formal ongoing multilateral intergovernmental coordination on financial matters, but the combined effects of vertical fiscal imbalance and fiscal austerity still produce periodic tensions over money (Gallagher, 2012; Swenden and McEwen, 2014). The FMQ normally meets three times per year, but did not meet at all for around three years as bilateral negotiations on finance took precedence (see below). This forum sits outside of the JMC framework, and appears even more hierarchical. It is regarded as useful for sharing relevant financial information by both the UK Government and at least some of the devolved governments (HL CC, 2015: 28). Michael Moore, former Secretary of State for Scotland, described the FMQ rather more critically as ‘a vehicle for the Treasury to hand out announcements to the devolved administrations ... without any negotiation ... Protest was heard, but this was not a place for negotiation and agreement’ (Moore, 2016: 11).

There is more clarity of purpose and equality of status within the British–Irish Council (BIC). Established as a product of the Good Friday Agreement (1998), its eight member governments from across the British Isles meet regularly to ‘exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant administrations’ (GFA, strand 3). Its broader purpose, however, is to help maintain peace in Northern Ireland (Clifford and Mophet, 2015). The BIC has a small permanent secretariat based in Edinburgh (5 full-time seconded staff), and conducts its work across 12 policy sectors, with varying levels of activity in each. Although most intergovernmental meetings take place among officials (there were 51 such meetings in 2016), the BIC held 28 ministerial summits between its inception in 1999

to the end of 2016, supplemented by more ad hoc ministerial meetings within work streams, and periodic 'extraordinary' summits on key issues, for example, on the outcome and implications of the Brexit referendum (BIC, 2016). Although its importance to the Northern Ireland peace process is recognized by all parties, the level of commitment varies. Whereas the Irish Taoiseach always attends, the UK Government is usually represented by one or more of the territorial secretaries or, during the coalition, the Deputy PM. The last time a UK Prime Minister attended was in July 2007.

The emergence of bilateral IGCs

Constitutional asymmetry has necessitated bilateral relations. In contrast to multilateral forums like the JMC and the BIC, bilateral exchanges are regarded, especially by devolved governments, as a more effective means of raising issues of concern directly with the UK Government, with more opportunities for influencing outcomes (see, for example, Robinson, 2015). For the most part, bilateral relations are conducted informally. In recent years, however, a new semi-formal machinery of bilateral IGCs has been introduced in Scotland and Wales, emerging from changes in the devolution settlements.⁴

The most notable of these are the Joint Exchequer Committees (JECs). The primary purpose of the JECs was to facilitate the transfer of new tax and borrowing powers derived from the Scotland Acts of 2012 and 2016, and the Wales Acts of 2014 and 2017. In the Scottish case, these included full powers over landfill tax, stamp duty land tax and air passenger duty, new borrowing limits, and steadily increasing responsibility for income tax. Income tax collection and the broader policy framework remain centralized, but following the 2016 Act, the Scottish Government, subject to parliamentary approval, is now responsible for setting the rates, thresholds and bands for all income tax on earnings above the personal allowance (Lecca et al., 2017). In Wales, landfill tax and stamp duty land tax were similarly devolved, along with new borrowing powers and more modest income tax devolution. From 2018, the UK Government will create tax room by reducing the basic, higher and additional rates of income tax for Welsh tax payers by 10 percentage points, leaving the National Assembly for Wales to approve the Welsh Government's rates for each band (Poole et al., 2016). These constitutional reforms meant that new fiscal frameworks had to be negotiated bilaterally. Issues included agreeing a mechanism for 'block grant adjustment' to reduce the size of fiscal transfers in light of increased tax autonomy, limits and rules on borrowing, and compensatory rules to avoid one level of government being detrimentally affected in terms of revenues or spending by the policy decisions of another (the so-called 'no detriment' principle). Although conducted in separate forums, the often challenging experience of the Scottish negotiations informed the development of the Welsh JEC.

In its first incarnation in Scotland, the purpose of the JEC and the relative status and influence of the two governments were never agreed; indeed, disagreement over the 'terms of reference' represented an early area of contention within the committee, reflecting the contrasting perception of the status and authority of each government (JEC, 2011). In this early phase, there was no mechanism for resolving disputes. Consequently, the JEC did not meet at all between 2013 and 2015 when negotiations on block grant adjustment reached stalemate. As one former official engaged in the process noted, there were so many other things going on (notably the run-up to the independence referendum) that the issues of dispute in the JEC got added to the 'too difficult' pile (interview with former SG official, 14 December 2016).

The JEC was resurrected during the passage of the legislation which would become the Scotland Act 2016, and became the site of intense intergovernmental interaction around the contentious issues of how best to adjust the block grant and implement the 'no detriment' principles. These were high stakes negotiations – without agreement, both the Scottish Government and the Scottish Parliament seemed set to withhold consent for the Scotland Bill – which could have seen the devolution legislation fall just weeks prior to the Scottish election. In the event, after 10 inter-ministerial meetings, 5 of which took place over a 5-week period in January–February 2016, a last-gasp compromise agreement was reached in a telephone call between the Prime Minister and the Scottish First Minister (Bell et al., 2016; HM Government/Scottish Government, 2016). The process was less combative in the Welsh case and took less time to agree (a rather different) Fiscal Framework for Wales (HM Government/Welsh Government, 2016; Poole et al., 2017). The process may have been eased by the preparatory work on Welsh territorial finance already carried out by the Independent Commission on Funding and Finance for Wales (Holtham Commission) and the Commission on Devolution in Wales (Silk Commission), the support for its recommendations across the political spectrum and within the wider policy community, as well as the UK Government's desire to avoid another tense and bruising experience in devolution negotiations.

The evolution of the JEC as an example of a bilateral IGC suggests that these operate somewhat differently from the multilateral IGCs discussed above. They are more task-oriented than regular JMC meetings, primarily to facilitate the transfer of new competences and their implementation. Although the long-term use of these forums is not yet clear, there is an expectation that the JECs will be utilized to manage the institutional and financial interdependencies created by the new devolution settlements.

From the point of view of the devolved governments, these bilateral IGCs are forums of equal partners. This was not always a view shared by the UK Government, though its approach changed depending on the ministerial representatives involved, and evolved over time. One former UK Government

minister attending an early meeting of the JEC described it as the worst meeting of his life, because of the intransigence of the Treasury and the lack of understanding and sympathy its representatives had toward devolution (interview, 1 December 2016). A senior Scottish Government official observed that the Treasury, a department whose role is usually to say 'no' to other departments' budget requests, seemed caught off-guard by the need to negotiate (interview, 22 April 2016). Some symbolic concessions to parity were made. The location and chair of JEC meetings rotated between London and Edinburgh or Cardiff. Moreover, the devolved governments were able to negotiate significant concessions. The Scottish Government secured agreement, subject to review, for its preferred method of block grant adjustment, which protects it from losses as a result of differential population growth. The Welsh Government secured a significant reform of the Barnett formula as it applies to Wales, with the introduction of a needs-based element in the calculation of fiscal transfers, addressing a long-running grievance. Both governments secured agreement for some independent oversight of the framework, once implemented – a concession described by one devolved minister as a significant deviation from the working culture of the Treasury (Drakeford, 2017a).

There remains an imbalance in the constitutional authority and resource capacity of each government which would suggest that in any bilateral negotiation, the deck may be stacked in the UK Government's favour. However, the JEC experiences, as with others before it, illustrate how some of the counterbalancing mechanisms Panke (2010) and others have observed in small state diplomacy can be observed within intra-state intergovernmental relations. The Scottish Government and the Welsh Government put more stock in securing positive outcomes from intergovernmental negotiations. As a result, they invest more time and effort identifying key issues and preparing their case, and carry more institutional knowledge about devolution issues. As one observer noted of the Scottish Government in intergovernmental negotiations, 'they do their homework, they have the politics better, and the intellectual arguments better' (interview with former UK Government minister, 1 December 2016). Officials suggested that Whitehall finds it difficult to sustain interest in issues which, from its perspective, seem peripheral, and there are far fewer personnel with knowledge of devolution issues (interview with SG official, 22 April 2016; see also Paun and Munro, 2015). As an illustration, soon after the UK–Scottish Fiscal Framework Agreement was secured, the three Treasury officials most central to the negotiations moved to other departments.

Power dynamics within bilateral IGCs associated with constitutional reform are also shaped by constitutional convention and practice. The UK parliament retains jurisdictional authority for the constitution, and so is legally solely responsible for determining reallocations of power. In practice, however, the process of constitutional reform has usually been driven from within

the devolved nations themselves, often with the explicit support of the UK Government. Territorially based commissions make recommendations, and decisions over the transfer of new powers are sometimes instigated or legitimized by referenda. In accordance with a constitutional convention (often referred to as the Sewel convention), which was itself incorporated into the Scotland Act (2016) and the Wales Act (2017), the Westminster Parliament will not normally legislate with regard to devolved matters without the consent of the devolved legislatures, expressed in legislative consent motions (LCM). According to the Scottish Deputy First Minister, such constitutional practice shaped negotiations within the JEC, following the stipulation of the inter-party Smith Commission report (which paved the way for the Scotland Act 2016) that the two governments agree on a new fiscal framework. 'It was not "it would be nice to"; it had to be agreed between both Governments. That obviously put a particular discipline on getting to an acceptable conclusion for both parties' (Swinney, 2016). The Welsh Cabinet Secretary noted that 'had we not had a fiscal framework, it would have been a very significant barrier to supporting an LCM on the Wales Bill and the Treasury were very well aware of that' (Drakeford, 2017a).

IGCs and Brexit

The UK's planned withdrawal from the European Union promises to affect significantly the relations between the constituent nations of the UK. The referendum result was an expression of British self-determination, following a campaign urging voters to 'take back control'. In Scotland, where 62% voted Remain, it brought the issue of Scottish independence back on to the political agenda. The prospect and impact of a hard border on the island of Ireland, meanwhile, is one of the biggest issues in negotiations with the EU. These and other territorial challenges unleashed by the referendum result have overshadowed the conduct of intergovernmental relations.

The early phase of the Brexit process – from the referendum until the triggering of article 50 – led to an intensification of multilateral intergovernmental relations, especially through formal IGCs. After almost two years without meeting, the JMC(P) was reconvened in October 2016 and met again three months later. The first of these meetings led to the creation of a new sub-committee, the JMC (EU Negotiations), to facilitate intra-UK negotiations and coordination related to Brexit (JMC, 2016). At the second, the leaders agreed to 'intensify their work ahead of the triggering of Article 50 and to continue at the same pace thereafter' (JMC, 2017). The JMC(EN) met four times between November 2016 and February 2017, chaired by the UK Secretary of State for Exiting the European Union. It took eight months for it to reconvene following concerted efforts by Welsh and Scottish ministers for its resumption (Drakeford and Russell, 2017; Sturgeon, 2017).

Unlike the other JMCs, the purpose of the JMC(EN) was much more focused and task-oriented, with the expectation of follow-up. Its remit, agreed by the JMC(P), committed the four governments to 'seek to agree a UK approach to, and objectives for, Article 50 negotiations' and to provide oversight of Brexit negotiations once underway 'to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations' (JMC, 2016). The JMC(EN) provided an opportunity to discuss papers presented by each of the devolved governments. The Welsh Cabinet Secretary suggested that his government's paper, which had emphasized the need for 'free and unfettered access' to the single market, influenced the language of 'free and frictionless trade' subsequently adopted by the UK Government, perhaps mirroring the successful norm advocacy of small states in EU policy and practice (Björkdahl, 2008; Drakeford, 2017b).

It would be a considerable stretch, though, to regard the JMC(EN) as a channel through which the devolved governments have been able to date, to exert meaningful influence. Having raised expectations that the JMC(EN) would seek joint agreement on a UK approach prior to the triggering of Article 50, it singularly failed to do so. The Prime Minister's Lancaster House speech setting down some parameters of the UK approach to Brexit was delivered without consultation, let alone agreement, with the devolved governments. Nor was there consultation on the content or detail of the Article 50 letter sent to the President of the European Council which formally opened the negotiations. Devolved government ministers pointed towards a lack of consultation, information-sharing and poor organization of JMC (EN) meetings. Mark Drakeford described it as a 'frustrating process' that has 'failed to give confidence to devolved Administrations that ... (their) views are making a genuine impact on the thinking of the UK Government' (Drakeford, 2017b). Michael Russell, Minister for UK Negotiations on Scotland's Place in Europe, described it as 'unnecessarily frustrating, and a wasted opportunity' (Rhodes, 2017). By contrast, the Secretary of State for Exiting the European Union claimed that the UK Government had 'bent over backwards' to take heed of concerns in the devolved nations (David, 2017: 14). Privately, UK Government officials conceded that the remit of the JMC(EN) created expectations that would always have been difficult to meet (interview with UK Government official, 8 May 2017).

The JMC(EN) faced some practical and political barriers. The intensification of IGR, in the context of the dramatic organizational impact of Brexit on Whitehall more generally, created resource challenges. Ministers from devolved governments complained about poor administration, communication and the absence, or late circulation of, minutes, agendas and a meaningful work programme (House of Lords EU Committee, 2017: 67–72). The collapse of the Northern Ireland Executive prior to the triggering of Article 50 rendered a four-party agreement within the JMC impossible. Such agreement was in

any event unlikely, given the divergent positions and political mandates of the governments. Yet, the JMC(EN) process also laid bare the challenges of operating IGCs in the UK in the context of perceived and actual constitutional hierarchy. The UK Government recognizes the right of the devolved governments to be consulted with respect to the negotiations, among other stakeholders, but not to co-determine the UK position, nor to exercise veto power over any aspect of the process (see HM Government, 2016; David, 2017: Q7). Moreover, the Secretary of State's testimony to the Lords EU Committee, and the interventions of senior Scottish Government ministers, reveals the extent to which the politics of independence overshadow intergovernmental relations, especially on high salience issues. The competing nationalist agendas of the UK and Scottish governments, in particular, inhibit the development of common goals, trusting relationships and shared confidences.

Concluding remarks

Intergovernmental relations in the UK are shaped by the nature of the UK constitution, the asymmetric distribution of power and the territorial politics that drive the evolution of devolution. The piecemeal and ad hoc approach to constitutional reform emerged without much consideration to the formal mechanisms that may be required to manage the evolving system of multi-level government. Successive UK Governments, in collaboration with the devolved governments, established and utilized IGCs as and when needed. Day-to-day informal interactions were thus supposed to be the norm, and for the first eight years of devolution, they were. With the exception of its European format, the JMC was moribund. Neither the UK nor the devolved governments saw the need to use it. Informal interactions were supported by party political congruence; governments were not competing against one another electorally, ideologically or territorially, and ministers mostly knew one another through party channels. Generous financial settlements also contributed to minimizing intergovernmental tension.

From 2007 onwards, concurrent developments drew attention from governments, parliaments and observers to the need for more robust IGCs, and although still sporadic when contrasted with more institutionalized systems, they have seen increased use since then. With regard to the five purposes of IGCs set out in the analytical framework above, they are less focused on negotiating agreements and coordinating action, and more on information-sharing and, where necessary, resolving disputes. But even here, informal channels are preferred to achieve these ends. From the UK Government's perspective, the JMC is a forum that can enable it to consult with and update the devolved governments and consider their points of view. These viewpoints may inform policy development, but they are unlikely to determine it. The devolution settlements have sought to make a clear distinction between

the respective jurisdiction of each level of government and, despite obvious policy interdependencies, the scope for genuine co-decision has been limited.

Within multilateral IGCs, in particular, the constitutional superiority of the UK Government and the relative weakness of the constitutional authority of the devolved governments has tended to overshadow the non-constitutional resources the latter could bring, and so limiting the extent to which they could exert meaningful influence. It was against this backdrop that we saw an intensification of the JMC process in the context of Brexit. Yet, expectations that this would lead to more focused, more collaborative and more equal deliberations and decision-making were dashed by the experiences of its first few months. The absence of federalism is not only apparent in the structures and distribution of constitutional authority. It is also apparent in the culture that pervades IGR. For the most part, the UK Government neither thinks nor acts like a federal government. Recent initiatives to foster understanding of devolution across Whitehall notwithstanding (Rycroft, 2015), the recognition within at least some federal states of the need to *work at* maintaining the federation through regular intergovernmental communication and negotiation has been lacking within the UK Government for much of the period of devolution.

Reforms to the devolution settlements are the notable exception, however. Although formally a matter for the UK parliament alone, the Sewel convention has given the devolved institutions informal authority, augmented by their niche expertise and sustained interest in devolution matters. As a result, they have been able to exert real influence over the scope of revisions to devolved powers, both informally and especially in bilateral IGCs such as the Joint Exchequer Committees. As such, for the devolved governments, the bilateral IGCs have served a purpose of both exercising shared rule and defending and maximizing their jurisdictional autonomy, with varying degrees of emphasis.

Although the Welsh and Scottish Governments have worked collaboratively in airing their dissatisfaction with the intergovernmental processes, especially in relation to Brexit, their broader motivations are not as aligned. Constitutional hierarchies and resource imbalances mean that the need for devolved governments to engage with and access the UK Government is greater than the latter's need to engage with them. But intergovernmental engagement matters most to the Welsh Government, which may explain why it has taken a lead on advocating reform. Constitutionally, economically and politically, it is weaker than its Scottish and Northern Irish counterparts, with a weaker voice and no exit strategy that could add leverage to intergovernmental negotiations. This may explain why strengthening shared rule through a significant institutionalization of intergovernmental relations – as proposed recently (Welsh Government, 2017) – has been a far greater priority for the Welsh Government than for its counterparts. For its part, the Scottish Government's participation within IGCs, especially under the SNP

administration, has been motivated by its desire to defend territorial interests and maximize its decision-making autonomy. These predominantly nationalist motivations can act as a barrier to co-decision and compromise, limiting the scope for the development of processes of shared rule.

It is impossible to isolate the distinctive effects on the purpose and dynamics of IGCs of changes which occurred simultaneously. Party political incongruence between the administrations, the election of the Scottish National Party, the intensity of constitutional debates before and after the Scottish independence referendum, the restoration of devolution in Northern Ireland, the effects of fiscal austerity on territorial finance, and new constitutional reforms have all shaped the development and dynamics of intergovernmental relations. These political and constitutional developments resulted in greater use of IGCs, but also exposed their shortcomings and heightened dissatisfaction, especially among devolved governments. Finding mechanisms to facilitate intergovernmental cooperation between the UK's governing administrations to their mutual satisfaction remains one of the biggest challenges in UK territorial politics.

Notes

1. The Northern Ireland Assembly was established in 1999, following the 'Good Friday Agreement' which was endorsed by the UK Government, the Irish Government and eight political parties in Northern Ireland (excluding the DUP, which has been the leading Unionist party, and largest party in the Assembly, since 2007). The Agreement was also backed by popular majorities in separate referenda in Northern Ireland and the Irish Republic – the latter endorsed an amendment to the Irish constitution which permitted the Agreement's ratification. Amid ongoing difficulties in securing peace and conflict resolution, the Assembly's early years were dogged by periods of suspension: 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. A period of relative stability followed until 2017, when the government collapsed amid a financial scandal.
2. I use the term 'intergovernmental council' or IGC to conform to the terminology of this special issue, though the term itself does not feature prominently among scholars or practitioners of UK IGR.
3. In line with the Concordat, ministers from the devolved governments can be invited to attend EU Council meetings as part of the UK negotiating team. Whereas for Agriculture and Fisheries Council meetings, attendance was commonplace, it was more sporadic or rare in others (informal email exchange with Scottish Government official, August 2017).
4. A separate parallel process led to increased fiscal transfers and a pledge to devolve corporation tax in Northern Ireland, but this was part of a broader set of discussions between the Northern Ireland Executive, the UK Government and the Irish Government to address a fiscal crisis, confront paramilitary activity, and stabilize devolution and peace.

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