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Intergovernmental Relations in the UK: Continuity in a Time of Change?

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Governments in Opposition? Intergovernmental Relations in the UK in a Context of Party Political Incongruence.

Edited by Nicola McEwen, Wilfried Swenden and Nicole Bolleyer

Abstract

Party political incongruence in the UK after 2007 has had a moderate effect on both the machinery of intergovernmental relations and the dominant modes of intergovernmental interaction. In assessing changes in intergovernmental structures, we find more frequent meetings and more formalized interactions. A preference for informal bilateral exchange, however, still prevails. In assessing changes in the nature of intergovernmental relations, we find some intensification of conflict, but amid continued cooperation. While one might find more pronounced changes after longer periods of party political incongruence, we argue that the limited effect observed thus

far can be traced back to (i) formal-legal features of the UK multi-level polity (ii) the nature of the policy sectors requiring intergovernmental coordination (iii) the specific political dynamics within the constituent governments, and (iv) the mitigating role and structure of non-elected institutions such as the civil service and the judiciary.

Keywords: Intergovernmental Relations; UK; Devolution; Party Incongruence

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1 figure

Intergovernmental Relations after Devolution

Advocates of devolution paid little heed to the necessity or mechanisms of intergovernmental relations (IGR). Their focus was instead on self-government, policy autonomy, democratic renewal and national distinctiveness. Nonetheless, a system of formal and, more often, informal relations between the devolved governments and the UK government has emerged. This was inevitable, given the necessity of governmental interaction to address the disputes, interdependencies and spill-over effects resulting from constitutional overlaps, as well as the need to confront policy problems which defy competence divisions, and to develop common positions in advance of EU negotiations.

We might expect that such relations would be more effortless and harmonious when governments at each level are led by the same political party. Under such conditions of party congruence, sub-state party branches are (usually) part of broader polity-wide party organizations (organizational cohesion), and consequently, political agendas, ideological preferences and policy goals may be more readily shared across territorial boundaries (programmatically congruence). Indeed, we might expect this to be especially so in the UK, where political parties (outside of Northern Ireland) have maintained a cohesive structure and identity across territorial and institutional boundaries since devolution. The sub-state branches of state-wide parties have seen their decision-making autonomy over devolved elections and policy-making enhanced to varying degrees. Yet, in Scotland and Wales, these parties retain a deep sense of identification with and commitment to the state-wide party (Laffin and Shaw, 2007; Bradbury, 2009; Fabre, 2008; Detterbeck and Hepburn, 2010).

The vertical integration within the statewide parties coincides with a growing internal differentiation of the party systems across each of the territories of the UK. Although the Scottish, Welsh and Northern Irish party systems have long been distinctive from the party system in England, devolution has magnified these differences. Devolution has turned the UK party system into a genuinely ‘multi-level party system’ (Swenden and Maddens, 2009) in which ‘the system of interactions resulting from inter-party competition’, to use Sartori’s phrase (Sartori, 1976), no longer takes place within one electoral arena but both within and across the devolved and Westminster arenas of electoral competition (Hough and Jeffery, 2006). Party competition within these distinctive institutional arenas does not take place in a bubble: electoral outcomes, party decisions and inter-party debates and trade-offs which occur at one level can influence party politics at another level. Thus, we might expect multi-level party competition to find expression in the intergovernmental arena especially in times of incongruence, when governments at each level are led by competing political parties.

This territorial differentiation of the party system has found expression in the UK’s system of multi-level government, especially since the election of nationalist parties to government in 2007, and the formation of the UK Conservative-Liberal Democrat coalition government in 2010. This newfound prevalence of party political incongruence in the composition of central and devolved government presented us with an opportunity to examine whether the adversarial party competition characteristic of Westminster parliamentary politics has transferred to the multi-level arena, giving rise to a new climate in IGR.

We set out two guiding questions in the introduction to this volume to discern the impact of party incongruence on IGR, based upon two empirical dimensions – the form, or structure, of IGR and the nature, or climate, in which these relations are conducted. First, we asked whether party political incongruence had resulted in a more institutionalized structure of IGR, in place of the emphasis upon informality, which had characterised IGR during the first eight years of devolution. Second, we asked whether party political incongruence generated more antagonistic interactions between the Westminster government and the devolved administrations in areas that require intergovernmental coordination. In this concluding chapter we first address both of these questions in light of the evidence presented in the contributions to this volume, and in the knowledge exchange generated within our ESRC seminar series. We argue that although there have been some moderate changes to the form and use of the intergovernmental machinery, and a notable increase in the extent of competition in intergovernmental relationships, the overall effect of party incongruence has been more modest than hypothesised at the outset. We then examine the institutional and political features of the UK which may account for the modest change observed. In so doing, we situate the UK in a comparative context to underline the extent to which the observations concerning the UK are related to UK-specific features or, alternatively, find resonance in other multi-level states. We conclude by reflecting upon the outcome of the 2011 devolved elections for the future dynamics of IGR in the UK.

Party Political (In)congruence and its Impact on the Machinery of Intergovernmental Relations

In relation to our first dimension, contributors were asked to examine whether party political incongruence had led to increased *formalization or institutionalization of intergovernmental relations*. Following Bolleyer (2006; 2009), increased institutionalization becomes visible: when core groups of government representatives meet more frequently in intergovernmental fora or councils as pre-structured settings rather than on an *ad hoc* or needs-only basis; if there have been increased resources allocated to the servicing of such councils, for example, in the form of secretariats to prepare meetings and provide expertise; if the decision-making rules of these councils have become more specified and elaborate; and if new structures have been created or are evolving to facilitate information exchange and collective decision making, and to thereby handle intergovernmental processes efficiently. Finally, the institutionalization of IGR would be evident in the creation and usage of formal mechanisms of conflict resolution.

In the introduction, we hypothesized that incongruence may have accelerated the need for institutionalized IGR since the mechanisms of intra-party coordination between and across levels can no longer be activated, necessitating more intergovernmental coordination mechanisms instead. As a counter-hypothesis, party incongruence may lead to a decline in institutionalized IGR since party politically incongruent governments may want to have as little to do with each other as possible. The evidence presented in this special issue suggests that incongruence has somewhat increased the level of formalized or institutionalized IGR, but not to the extent that some had hoped.

In the first eight years of devolution, IGR were scarcely formalized. The key multilateral body set up to streamline IGR, the Joint Ministerial Committee, proved to

be of relatively little significance (Trench, 2007a). In its functional format, JMC meetings were just as rare; only the JMC (Europe) met regularly, usually four or five times a year, and with a significant policy coordination role, in preparation for meetings of the European Council (see Högenauer, 2011). That is not to suggest that the UK's multi-level administrations rarely met, but when they did it was more often outside of the JMC framework. As Gallagher outlined in his contribution to this volume, multilateral meetings of Finance ministers have been fairly regular, and the frequent meetings of agricultural ministers - again outside of the JMC framework - were held up as a positive example of intergovernmental collaboration (HL SC, 2002). But intergovernmental communication was designed - inasmuch as it was designed at all - to be informal and, in the words of the Memorandum of Understanding, 'between departments which deal on a day-to-day basis with the issue at stake' (*Memorandum of Understanding*, 1999).

We hypothesised that the prevalence of informal intergovernmental interaction was at least in part a result of the dominance of the Labour Party in government at Westminster, in the Scottish Parliament and in the National Assembly for Wales. Indeed, this view voiced by practitioners. The Report of the House of Lords Select Committee on the Constitution quoted evidence from the then Secretary of State for Scotland, Helen Liddel, to illustrate this view, as well as to underline the Committee's anxiety regarding what it saw as an over-reliance on goodwill as a principle of IGR. From the Secretary of State's perspective, there was:

little doubt that the easy, informal relationship which exists between myself and the present First Minister, and existed with the previous First Minister, *because*

we are all members of the same party, does help ... the very fact that we can each lift the phone to one another and discuss matters knowing we are among friends and with a similar longstanding desire to see not just a successful Scottish Parliament but also a stronger United Kingdom helps (HL SC, 2002, para.24; italics were added by the Committee).

The Committee expected the goodwill underpinning such informal collaboration to diminish under conditions of party incongruence (*ibid.*, para.26), and urged that IGR be put on a more formal footing to prepare for such an eventuality. Indeed, several ministers from the incoming SNP administration in Scotland in 2007 stressed the need for more formal IGR and, in particular, the resurrection of the Joint Ministerial Committee (see, for example, evidence presented to the Justice Committee enquiry by Bruce Crawford, then Scottish Minister for Parliamentary Business, and Deputy First Minister, Nicola Sturgeon, HCJC, 26 February 2008).

The heightened party incongruence after the 2007 elections can indeed be associated with, and arguably accounts for, the moderate increase in formalised multilateral IGR. The JMC was resurrected in a new domestic format, replacing its original functional format and meeting in addition to the JMC (Europe) and the plenary sessions. Plenary sessions have been held annually since 2008, several meetings of the JMC (Domestic) have also taken place since 2008, primarily to discuss joint approaches for tackling the economic crisis, and the JMC (Europe) continues to meet regularly.

Following pressure from the devolved governments, the Memorandum of Understanding, which guides processes of informational exchange between Whitehall

and the devolved administrations, now includes a formal *Protocol for Avoidance and Resolution of Disputes*, agreed in March 2010. Although it still places a premium on dispute avoidance and informal dispute resolution through official channels, the Protocol includes a more detailed procedure of the mechanisms for the resolution of a dispute should it be referred upwards to the Joint Ministerial Committee (<http://www.scotland.gov.uk/About/concordats/JointMinComm/>).

Individual governments, too, have moderately increased their investment in IGR since 2007. The UK government services, convenes and chairs these multilateral meetings, and since the change of government in 2010, more symbolic importance has been attached to them, evident in the role of the Prime Minister and Deputy Prime Minister in chairing the plenary and JMC (Domestic) meetings respectively. Although they are also involved in the JMC meetings, the territorial secretaries of state perform less of a liaison function than was occasionally apparent prior to 2007, in spite of being upgraded to full-time posts in Scotland and Wales once again. Instead, the devolved administrations focus their attention on cultivating relations with individual functional Whitehall departments. There has been some evidence of a centralisation of IGR within the Scottish Government, where politically salient IGR issues are now filtered through a Scottish-UK Liaison team, attached directly to the First Minister's office. This may suggest the beginnings of a process towards a more politicized handling of IGR, as typical for provincial governments in Canadian federalism, where only routine administrative and policy issues are left with line departments, while important political issues are taken care of by a specialized IGR unit driven by the priorities of the core executive (O'Reilly, et al, 2006).

In Wales, devolution was combined with an exceptional degree of legislative-executive interlocking (Swenden, 2006). The shared England and Wales legal jurisdiction and the Assembly government's high dependence upon Westminster and Whitehall for the introduction of Welsh primary legislation necessitated close intergovernmental collaboration. The implementation of the Government of Wales Act (2006), which coincided with the arrival of a Labour-Plaid Cymru coalition government in 2007, granted the National Assembly the right to pass laws or 'Measures' in 20 specified policy fields with the consent of the Westminster Parliament, either by using UK legislation as a framework to confer powers on the Assembly, or through Legislative Competence Orders (LCOs), initiated by the Welsh Assembly Government. In practice, few LCOs and Assembly measures were approved between 2006 and 2011. The complex and cumbersome process and the opportunities for the Welsh Affairs select committee to act as a veto player were heavily criticized (see evidence submitted to All Wales Convention, 2009 and Welsh Affairs Committee, 2010). However, these delays cannot be attributed to the partial political incongruence in the Welsh-UK intergovernmental relationship since 2007. Indeed, in their contribution to this volume, Wyn Jones and Royles suggested that the entry of Plaid Cymru to government had a minimal impact on IGR, either with respect to its processes or the manner within which it was conducted. The successful referendum in 2011 now confers upon the National Assembly for Wales full legislative powers in the policy fields designated by the Act, reducing WAG's institutional dependence. This, coupled with the appointment of Cheryl Gillan, a Conservative MP representing an English constituency, reduces the relevance of the office of Secretary of State in Wales.

The moderate increase in the institutionalization of multilateral IGR has not replaced informal bilateral engagement, which remains the prevalent form of IGR. However, in the view of senior civil servants involved in the process, the JMC now sits at the apex of the UK's intergovernmental processes, establishing conventions and rules of the game within which more routine intergovernmental interaction takes place. The commitment to the process demonstrated by senior ministers within the UK government after 2010 was also thought to send a 'powerful signal' which promoted good relations throughout the civil service machine.²

Although intergovernmental co-ordination with the UK government functions in a similar way in Northern Ireland, it displays some unique characteristics. Northern Ireland's political parties are wholly distinct from those competing in the rest of the UK, notwithstanding the ill-fated electoral alliance between the UK Conservative Party and the Ulster Unionist Party in the run-up to the 2010 Westminster election. It thus features a permanent political incongruence from governments elsewhere in the UK. Moreover, the Northern Ireland Executive sits at the heart of an elaborate system of formal intergovernmental processes channelled through distinctive intergovernmental fora, most notably the British-Irish Council and the North-South Ministerial Council. These are highly regulated, codified and set in statute. By contrast, the bilateral relations between the Northern Ireland Executive and the UK Government are no more formal than the latter's relations with the other devolved administrations; the modest increase in formal multilateral IGR have involved the NIE as much as the other devolved administrations. Rather, as Birrell's analysis clearly indicates, the main political cleavage with respect to Northern Ireland is an internal one. The complex north-south and east-west processes of intergovernmental

interaction, involving not just the UK government and the other devolved governments but the Irish government as well, reflect a desire to provide reassurances to both nationalists and unionists and thereby to reinforce the peace process.

Returning to Bolleyer's indicators, party political incongruence has had a modest, but not overwhelming, impact on the formal processes through which IGR are conducted. Ministers meet more frequently in formal JMC meetings, and these are less *ad hoc* than in the period of party congruence. The resurrection of the JMC in plenary form and the incarnation of its domestic format necessitated a modest increase in investment in the resources required to service IGR. The dispute resolution mechanism - already envisaged as a component of the JMC in the original Memorandum of Understanding - was elaborated and reinforced in the 2010 protocol. But in spite of this increased formal interaction, there is no evident increase in collective decision making, and a preference for informal bilateral exchange clearly prevails on all sides.

Party Political (In)congruence and its Impact on Intergovernmental Dynamics

In examining *the nature of intergovernmental interactions*, we were concerned with the extent to which party political congruence contributed to cooperative and cordial relations and, conversely, whether heightened party incongruence engendered more confrontational IGR, characterised by an adversarialism that has been a traditional (if at times exaggerated) feature of Westminster parliamentary politics.

Various contributions to this special issue have shown that in the first eight years of devolution (1999-2007), when party congruence prevailed, cooperation rather than confrontation was the norm. Central and sub-state governments shared a determination to make devolution work, and the avoidance of disputes in IGR was a clear objective (see also HL SC, 2002; Horgan 2004; Trench 2007a). Such cooperation was also by and large *ad hoc*; it only emerged when it was deemed necessary. Co-decisions (requiring the consent of both levels of government) have been relatively infrequent. Legislative consent motions are notable examples of co-decision mechanisms between the UK and devolved parliaments (usually through negotiation between both levels of government), but this extent of co-decision is not evident in other intergovernmental channels, especially between the UK government and the Scottish Executive (as discussed above, the limited scope of Welsh devolution necessitated more co-operation and co-decision).

Devolution was not an entirely conflict-free zone during the period of party congruence. Tensions periodically emerged as a result of policy divergence, policy interdependence and, especially in the Welsh case, institutional dependence on central government. Policies of the devolved authorities especially ran into Whitehall opposition when considered a threat to the broader redistributive policy goals of the UK Labour Party, reflecting the latter's welfare unionism (see Keating, this volume). This was illustrated when the UK government challenged the Scottish government's competence to make (more generous) compensation payments to those suffering from Hepatitis C as a result of contaminated blood products (see Cairney, 2006: 433; and this volume). Notably, this particular issue was resolved after an agreement was reached between the relevant ministers, both Labour Party colleagues. Conversely, the

unresolved issue emerging from the Scottish Labour-Liberal Democrat administration's implementation of free personal care for the elderly - and the subsequent rejection by the UK Department of Works and Pensions to transfer the revenues saved through the UK Attendance Allowance programme to the Scottish Executive (Simeon, 2003) - demonstrated the scope for tension as a result of programmatic differences often emerging from partial incongruence, as well as illustrating the hierarchical nature of UK IGR. These are, however, isolated examples. Few disputes emerged between Scottish and UK governments in this period, and those which did so were resolved politically through party channels, or as in the case of free personal care, left to go unchallenged. The formal mechanism for dispute resolution was considered a 'nuclear option' to be avoided if possible (senior official, Scottish government, speaking at a British Council conference in Madrid, March 2005).

In Wales, where there was greater need for intergovernmental cooperation given the National Assembly's dependence on Whitehall and Westminster for legislative change, periodic tensions arose as a result of the Welsh Assembly Government's frustration at the perceived lack of access to these central institutions. The comparatively smaller size of Wales, its limited powers and the presence of 'devosceptics' among the ranks of Welsh Labour MPs produced a strong imbalance in IGR between the Welsh Assembly Government and the UK government. Such dependence of one governmental actor on another for cooperation may paradoxically provide more scope for conflict if one of the key partners reneges on its consultative and cooperative 'obligations'. This may help to explain why the Labour-led Welsh Assembly Government was more assertive in its relations with the UK government than were its Scottish counterparts, though clearly personality and politics also played

a role. Shortly after he was elevated to the post of First Minister (after the downfall of the Prime Minister's first choice FM, Alun Michael), and especially after the high water mark in Plaid Cymru's support in 2003, Rhodri Morgan pursued a small 'n' nationalist agenda to put 'clear red water' between Welsh Labour and UK Labour. Hence, the Welsh Assembly Government asserted its distinctiveness from Westminster more readily than its Scottish counterparts, albeit while retaining a similar desire to avoid overt intergovernmental disputes.

In the wake of the 2007 elections, there has been a moderate increase in intergovernmental tensions, especially in Scottish-UK relations. As well as kick-starting the debate over Scotland's constitutional future, the SNP sought to maximise its influence within the current constitutional settlement, while at the same time exposing the limitations of that settlement when making the case for greater self government for Scotland. The SNP government also set out to adopt a more assertive style in its dealings with the UK government than had been evident under the previous Scottish administration, staking a claim to 'stand up for Scotland' within the Union. Not surprisingly, this assertiveness created periodic intergovernmental conflict. For example, the UK government's prisoner transfer agreement with Libya, without prior consultation with or agreement from the Scottish government, was regarded as a threat to Scotland's judicial independence given its implications for the release of Abdelbaset Ali Mohamed al Megrahi, the man convicted of the Lockerbie bombing (see Gallagher, this volume). The Scottish government voiced its protests vociferously and publicly, much to the embarrassment of the UK government (Trench, 2007b).

Intergovernmental tension has also been evident on financial issues. To some extent, the scope for intergovernmental conflict on fiscal issues has been limited in the UK compared to other multi-level systems given the pre-determined method of calculating fiscal transfers and the unconditional nature of the block grant. However, the constraints imposed by Treasury rules have generated heated intergovernmental exchanges between the Scottish government (and the other devolved administrations) and the UK Treasury, both before and after the 2010 General Election. These tensions have been less on the application of the Barnett formula (which for now is taken as given) than on what Trench refers to as 'second-order issues' (Trench, 2008: 81). These include issues concerning the means by which the Scottish government might access additional resources from the Treasury, for example, from End Year Flexibility and the Fossil Fuel Levy.

However, the degree of Scottish-UK intergovernmental conflict should not be exaggerated. Cairney (this volume) described the change as piecemeal rather than seismic. This may in part have reflected the SNP's minority status in the Scottish Parliament between 2007 and 2011, which kept the most contentious issues (the constitutional question, and the proposal to replace the council tax with a local income tax, which would have had spillover effects with social security) off the legislative, and hence the formal intergovernmental, agenda. There are also many policy areas where the Scottish and UK governments shared policy goals and, at ministerial and official level, informal intergovernmental interactions have remained broadly cordial. A notable exception could be seen in relations with the Scotland Office, especially during Jim Murphy's tenure as Secretary of State for Scotland between 2007 and 2010. This resulted in the politicisation of the post, with Murphy having a higher

media profile than many of his predecessors, and a clear remit to challenge First Minister Alex Salmond's claim to 'speak for Scotland'. In IGR, the Scotland Office sought to play a more active role, operating as a political gatekeeper with the capacity to steer the manner in which some other Whitehall departments liaised with the Scottish government. Early indications suggest that this was a particular hallmark of the UK Labour government's response to party incongruence, and that a more relaxed relationship has been restored under the Conservative-Liberal Democrat coalition (Interviews, Scottish government officials, March 2010, February 2011; ESRC seminar series, September 2010).³ This reveals that the inter-governmental pressures between 2007 and 2010 were more a reflection of intra-territorial party competition between Labour and the SNP *within* Scotland, where the two parties dominate the party system.

In Wales, the election of the Labour-Plaid Cymru coalition in 2007 – heralding a return to partial incongruence in IGR alongside the new challenge of an autonomist party in power – coincided with increased tension in the intergovernmental relationship with the UK government. However, there is no evidence to suggest that this tension was a result of increased party political incongruence. Notwithstanding its occasional protests about intergovernmental finance and procedure, Plaid Cymru's approach to government and IGR was pragmatic; the party was keen to demonstrate that it could govern responsibly and, moreover, wanted to ensure UK government cooperation on the staging of a constitutional referendum to grant direct primary legislative powers to the National Assembly. Wyn Jones and Royles (this volume) suggested that the increased tension in IGR was more a result of the implementation of Part 3 of the Government of Wales Act, which they argued turned Whitehall and

Westminster (especially the Select Committee on Welsh Affairs) into 'veto players' in their scrutiny of the legislative competence orders emanating from the National Assembly for Wales (see also Trench, 2008). Indeed, the Presiding Officer of the National Assembly for Wales, Lord Elis-Thomas AM, reportedly wrote to the Secretary of State for Wales in October 2008 to complain about the obstructionist approach and 'anti-devolution sentiments' of the Welsh Affairs Select Committee when considering and scrutinising LCOs (Chaney, 2009: 8). These tensions were as much intra-territorial - and indeed intra-party - as they were inter-institutional, revealing strains in the relationship between Welsh Labour Assembly members and Welsh Labour MPs.

Although the dynamics of IGR between the UK government and the Northern Ireland Executive are entirely different given its association with the peace process, the resurrection of the Northern Ireland Assembly might have been expected heighten tensions in IGR after 2007. As has been discussed elsewhere in this volume, Northern Ireland's political parties are wholly separate from the parties competing in the rest of the UK, and thus IGR are marked by permanent incongruence. But in a departure from the previous Assembly, the Northern Ireland Executive after 2007 was led by a DUP First Minister, the Rev Ian Paisley, and his Sinn Fein deputy, Martin McGuinness. This reflected a radicalisation of the vote in Northern Ireland, which could have erupted into the intergovernmental arena. In the event, however, bilateral UK-Northern Ireland IGR have been relatively muted; in Northern Ireland's power-sharing arrangements, intra-governmental party differences are a greater source of tension than inter-governmental tensions with the UK government, whichever party leads the latter. It is notable, however, that parties within the Executive prioritise

distinctive intergovernmental channels which fit more neatly with their political orientations: nationalists prioritise north-south links while cooperating with Westminster and Whitehall is a more central concern of unionist parties.

The deficit-reduction drive of the UK coalition government is now placing 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 – their main source of revenue. Wyn Jones and Royles (this volume) spoke of a ‘marked deterioration’ in UK-Welsh IGR since 2010, with overt and at times seething criticism from Labour ministers in the Welsh Assembly government towards the UK coalition government’s treatment of Wales.

Under conditions of full incongruence, the devolved governments have also appeared more willing to co-ordinate their opposition to the UK government agenda, as was seen in their joint declaration calling on the UK government to scale back its planned public expenditure cuts in the devolved territories. A particular finance-related grievance – on the categorisation of expenditure on the 2012 Olympics – led to the first meeting of the JMC in its dispute resolution mode (see Trench, *Devolution Matters* blog, 14 October 2010). The failure thus far to change the position of the Treasury on this issue reflects the hierarchy inherent in the intergovernmental relationship. However, there is limited incentive for such horizontal collaboration, given the lack of added value in joining forces in opposition to the UK government.

As one official noted, there are a limited number of common issues, no votes in the JMC and ‘no more bang for your buck’ when devolved administrations combine to engage collectively with the UK government (senior official, Welsh Assembly government, speaking at an Institute of Government conference, London, September 2011).

Explaining the Limited Impact of Incongruence on UK Intergovernmental Relations

What explains this relatively modest effect of party political incongruence on both the machinery of IGR and the dominant modes of interaction? Why have IGR not become more institutionalized or more adversarial? In the paragraphs below, we seek to answer both questions, where useful by putting the UK into a comparative perspective. Although we are conscious not to put too much emphasis on the ‘exceptional’ features of UK devolution, there are nonetheless some aspects of devolution which render highly institutionalized or highly adversarial IGR less likely than in a majority of parliamentary federal states. We seek to understand the dynamics of IGR in the UK with reference to four specific features: (i) formal-legal features of the UK multi-level polity (ii) the nature of the policy sectors requiring IGR (iii) the political dynamics within the constituent governments, and (iv) the mitigating role and structure of non-elected institutions, notably the civil service and the judiciary.

Formal-legal features

The UK is not a federal state but a territorially devolved, plurinational union (Elazar, 1988, Watts 1998; 1999; Bogdanor 2001; Keating, this volume). The distinction between federal and non-federal states is important since the constitutionally protected autonomy of 'lower-level governments' in a federal set-up increases the incentive for engagement in multilateral (horizontal and vertical) structures of coordination. These structures are not only activated in the daily coordination of policy, but also in debates on the reallocation of competencies, a process that often involves the concerted action of lower-level governments. Accordingly, investment in multilateral structures is more likely, and more profitable, in federal contexts. In non-federal systems, individual lower-level governments can be excluded more easily from policy coordination and debates on the reallocation of competencies, given their weaker constitutional status. The inequality between central and lower level governments further allows the centre to engage with each devolved unit bilaterally and on an *ad hoc* basis. Incongruence does little to alter this basic structural feature of devolution. The contributions to this special issue have illustrated the relative weakness of the JMC and other multilateral forums for IGR in the UK, even in times of incongruence.

The difference between federalism and devolution can also shape the nature of IGR since in federal systems sub-state governments can afford to be less cooperative as their constitutionally guaranteed autonomy protects them from the threat of unilateralism by the centre (Riker 1964; Thorlakson 2007; Bednar 2009; Bolleyer 2009). As Cairney demonstrated in his contribution, even in Scotland, the UK territory with the highest degree of self-rule, no mechanisms are at hand to oblige the UK government to consult the Scottish government on issues that may affect

devolved competence, although the principle of consent enshrined in the Sewel convention and the Memorandum of Understanding remains important. Furthermore, the SNP's resolve to demonstrate that it could govern effectively required the capacity to access key Whitehall departments. That capacity would be threatened if the party were to adopt a strategy of 'continuously venting its frustration with the power of the UK government' (Cairney, this volume). The need for a cooperative approach was even more imperative in the case of Wales, given its heavy dependence on the legislative and policy capacity of Westminster and Whitehall, only partially offset by the recent transfer of legislative competence.

The highly asymmetric nature of devolution also helps to explain the absence of strongly institutionalized IGR and the prevalence of bilateralism. Asymmetry in the UK has two sources. The first source follows from the applicability of devolution to a relatively small share of the overall population (about 15 percent). The lack of self-rule for England implies that the UK government doubles up as the *de facto* government of England in policies that are devolved to the other parts of the United Kingdom. As such, it seeks to guard against giving Scotland (and for that matter the other devolved territories) excessive influence over England (see Keating, this volume). Highly institutionalized IGR could strengthen the access and influence of devolved administrations beyond what was deemed acceptable to mainstream opinion in England.

The second source of asymmetry in the UK relates to the variable degrees of self-rule for Scotland, Wales and Northern Ireland. This reinforces the lack of institutionalized IGR since it makes a concerted approach between the devolved territories often

difficult or unnecessary. Trilateral meetings of ministers and officials within the ‘Celtic forum’ do take place, but infrequently. The asymmetric distribution of competencies between the devolved territories contributes to the perceived lack of benefits of such concerted action. In contrast, symmetry is more conducive to multilateral interaction, regular codecision and the institutionalization of IGR than asymmetry, which puts a strong premium on bilateralism and flexibility. Again, the contributions documenting IGR in the UK bear this out.

Thirdly, and related to the previous point, for long the absence of legislative devolution for Wales necessitated a stronger intergovernmental relationship with Whitehall and Westminster. As such, the experience of Wales is more in line with cooperative multi-level systems that start from a functional division of powers, where lower-level governments often implement or modify legislation ‘framed’ and enacted by the federal legislature. Yet, because Wales was the only devolved territory in that position, with a very small population in relation to the rest of the UK and a corresponding lack of influence, it could not muster the strongly institutionalized intergovernmental relationship that the German Länder have established in relation to their federal government (e.g. Benz 2004; Bolleyer and Bytzeck 2009; Lehmbruch 1978; Scharpf 1988; Swenden 2004). German federalism, as was the case with Welsh devolution, is based on a strongly cooperative multi-level design, but the Welsh Assembly Government was more exposed to the ‘shadow of hierarchy’ (Héritier and Lehmkuhl, 2008), and has struggled to get Wales and Welsh issues on to the political agenda of central government. This ‘shadow’ was as apparent in periods of congruence as it was in periods of incongruence, highlighted by the internal power

struggle within the Wales Labour Party between its Westminster and Assembly wings.

Policy sectors

The processes and nature of IGR are also affected by the policy sectors to which they apply and we can observe variation in the degrees of conflict that characterize certain policy fields. As the policy literature emphasises, each policy field embraces a variety of issues representing different interest constellations, inviting different patterns of conflict (Lowi 1964; Scharpf 1997). However, comparing a range of policy areas allows for a relative estimation of the given conflict potential. Fiscal and welfare policy, because of their highly redistributive nature, can be classified as prone to high conflict. Conflict can also be intense in intergovernmental negotiations over development programmes, for example, regional policy or transport policy, since they usually involve large sums of money. Less conflictual IGR can be expected in policy fields that are highly technical and regulatory, or where governments at different levels broadly share policy goals. Environmental regulations - pollution control, carbon emissions reductions, energy demand, etc – provide a good example.

In the UK, the highly centralized, but less politicized, mechanisms underpinning the funding arrangements of the devolved authorities have minimized intergovernmental conflict in what is normally a high conflict area. The ‘Barnett formula’ implies that discussions on the size of the block grant are largely kept out of the intergovernmental arena. Rises (or decreases) in the unconditional block grants for Scotland, Wales and Northern Ireland are pegged to UK public expenditure changes in England (in areas

that are devolved to Scotland, Wales and Northern Ireland). This ‘relatively fixed’ distribution formula, which predates devolution, has had the benefit of keeping turf wars about appropriate fiscal equalization formulae, which so often dominate intergovernmental politics in Belgium, Spain, Canada or Germany, out of the UK intergovernmental arena (see for instance Colino, 2009; Lecours and Béland 2010). However, following the global financial crisis, and especially the election of the UK Conservative-Liberal Democrat coalition, UK budgetary cuts have clearly increased intergovernmental tensions as they triggered a commensurate decrease in the size of the devolved block grant. This has strengthened calls from the devolved territories for the reform of territorial finance: in Scotland, this takes the form of demands for greater fiscal autonomy; in Northern Ireland, the focus has been on securing the devolution of corporation tax; and in Wales, discussions centre on changing the method of regional distribution within the block grant, which is seen in its current form as penalizing Wales (see Independent Commission on Funding & Finance for Wales, 2010).

As is the case in many multi-level member states of the EU, there is more intense intergovernmental coordination on issues that have a strong EU dimension. Bilateral engagement dominates here too, but there is more multilateral coordination on EU matters, for example in ministerial meetings between agricultural ministers and especially within the JMC (Europe). This practice already predated the more widespread occurrence of incongruence. The extent to which these mechanisms prevent the UK government from centralizing the UK polity through the European backdoor remains an open question. When congruence still prevailed, the leaked report by Michael Aron, then Head of the Scottish Government EU office (Aron

2006) portrayed a UK government which often side-stepped or ignored devolved interests in Brussels, though academic accounts of that period had been notably more optimistic about the capacity of the devolved territories to upload their interests in EU matters (Carter and Smith 2008; Tatham 2010).

Paradoxically, in the area of social and welfare policies more tensions may have emerged when congruence prevailed, resulting from an apparent ‘race to the top’ in welfare policies and the UK Labour Party’s reluctance to accept territorial differences in social entitlements across the UK. The aspiration to provide common minimum levels of services as an entitlement of citizenship is less central to the policy agenda of the UK Conservative-Liberal Democrat government, and it runs against the logic of the self-governing parties in Scotland and Wales who, to varying degrees, have sought ownership for their respective territories over all domestic policies and developed distinctive welfare regimes.

Political dynamics

The political dynamics within each unit of a multi-level polity, most notably the nature of executive-legislative interactions, can shape IGR (Benz 2004: 133). The distinction between one-party governments and coalition governments is crucial here, as is the relative strength of government and parties at each level. Governmental tiers which usually produce one-party majority cabinets tend to have more frequent turnover of parties of government, raising the costs of maintaining steady interaction and of building strong infrastructures to channel intergovernmental processes. Moreover, electoral competition and the threat of electoral defeat heightens the

tendency to shift blame on to other governments, fostering mutual distrust and inhibiting fruitful intergovernmental exchange (Bolleyer, 2009). Although devolved governments have frequently been formed by coalitions (mandatorily so in Northern Ireland due to the power-sharing arrangement in place), from 1999 until 2010, UK central governments were made up of one-party majorities. In this sense, the incentives for the UK government to engage in strong and binding IGR have always been weak.

The presence of the Liberal Democrats within the UK coalition government initially took the sting out of IGR, particularly in Scotland. The post of Secretary of State for Scotland is held by a Liberal Democrat - a party which won 11 Westminster seats in Scotland to the Conservatives' one seat. Conversely, the minority status of the SNP government had taken some highly contentious issues off the intergovernmental agenda. The upper cut to the Liberal Democrats in the 2011 devolved elections, when they were reduced to just five seats in the Scottish Parliament, and the upgrading of the SNP government to that of a one party majority government, can be expected to change the dynamics of the intergovernmental relationship. Those contentious issues – especially the wide-ranging constitutional question – are now very much on the agenda, while the legitimacy of the Liberal Democrats to speak on behalf of Scotland within the UK government has decreased. Meanwhile, the near majority status (30/60 seats) of the Welsh Labour Party in the National Assembly for Wales after the 2011 elections, combined with the elevation of the Conservatives to second party status in the Assembly, may in part explain the increasingly adversarial nature of Welsh-UK IGR. These political dynamics reinforce the need to consider party competition from a

multi-level perspective; the relative strength and performance of political parties at one level can influence the dynamics of IGR between governmental levels.

Non-elected institutions

Finally the contributions by Parry and Trench focused on two institutions that help to keep intergovernmental tensions at bay. With regard to both of these institutions, the UK is an outlier. The first is the civil service, and its capacity to 'oil and glue' IGR. Party incongruence is likely to matter less where the senior civil service has retained a politically neutral character or is still part of an integrated state-wide civil service. The former is the case for all parts of the UK, the latter holds for all the devolved territories except Northern Ireland. In this sense, the UK experience is quite different from that of most federal states in Europe and North America, in which many of the functions of the senior civil service are carried out by political advisors (in political or ministerial cabinets) or senior civil servants with a clear political affiliation (as in the US where the spoils system applies).

In mitigating the adversarial character of IGR, this political neutrality may matter at least as much as the integrated nature of the civil service. Parry substantiates this point with reference to the autonomous Northern Ireland civil service. Conflicts between the Northern Irish and UK governments cannot be attributed to the lack of an integrated civil service, especially since the NI civil service operates under procedures that are almost identical to that of the UK Home civil service. At the same time, Parry's contribution also shows that even devolved governments in which nationalist parties participate (who often prefer an autonomous civil service as a matter of

principle) acknowledge the added value of an integrated civil service, ensuring that the most senior civil servants in the devolved governments know their way around Whitehall.

The minimal intervention of the courts in devolution matters is also comparatively unusual (see Trench, this volume). In many federal states, the judiciary has played an influential role in shaping intergovernmental relationships (Baier, 2006). Part of the explanation for why this has not been the case in the UK can again be found in the ‘unequal relationship’ which sets devolution apart from a federal setting. In the UK, access to judicial proceedings is not equal for all partners in an intergovernmental relationship since the UK Supreme Court cannot declare Westminster parliamentary legislation void; only devolved legislatures can be compelled to act as a result of the Supreme Court’s decisions. However, Trench also suggests that another part of the explanation must be sought in the procedural guarantees that check the compliance of proposed devolved legislation with UK parliamentary law and the flexibility of the devolved arrangements, which obviate the need for formal or judicial settlements. Most importantly, the law and lawyers have played a comparatively small role in the practice of government in the UK, which sets it apart from most parliamentary federal states, or the US where lawyers are often the best represented profession in government. In the UK, by contrast, there is a strong resolve to settle matters in a political rather than a judicial way. Therefore, incongruence has not been accompanied by legal battles as in Spain or Italy (Stone-Sweet 2000; Palermo 2005), or even Germany (especially on fiscal equalization disputes - see Mackenstein and Jeffery, 1999). Instead, incongruence has seen a characteristically pragmatic response from the governments involved in UK IGR.

A similar pragmatism could be seen in the UK government's early response to the election of a majority SNP government in Scotland in May 2011, especially to the latter's determination to press ahead with an independence referendum during its parliamentary term. Although the UK government could have grounds to contest the legality of the Scottish government to take such a step given that constitutional matters are 'reserved' to the Westminster parliament, it has thus far opted to fight against independence politically instead of legally. This effectively legitimising the SNP's referendum process, albeit that pragmatism is combined with politically motivated criticisms of the timetable and probable format of the referendum question.⁴ When the *Partido Nacionalista Vasco* contemplated a similar move when in government in the Basque country, the Spanish Socialist government did not hesitate to call on the Constitutional Court to declare the referendum void, which it did in September 2008, a month prior to the envisaged date of the referendum.

Conclusion

What then, can we conclude, about the effect of party congruence and incongruence on the structures and dynamics of IGR in the UK? Four years of prevalent incongruence is a relatively short time-frame from which to draw definitive conclusions with regard to changes in institutional structures or dominant dynamics. Nonetheless, we can make preliminary observations with regard to both the machinery of IGR and the nature of intergovernmental dynamics. These are summarised in Figure 1.

FIGURE 1 ABOUT HERE – OR IN AN APPENDIX

First, there appears to have been greater continuity than change in the limited degree of institutionalization which characterises IGR in the UK. There have been some changes, most notably with the establishment of the JMC (Domestic) and the re-establishment of the JMC in its plenary form, as well as an elaboration of the mechanisms for dispute resolution. This may in part be a result of pressure from the numerous committees and specialists calling for a more robust system of IGR, but it is especially in response to pressure from the devolved administrations and of the fact of party incongruence itself. But this renewed intergovernmental machinery has not replaced the day-to-day informal interaction envisaged back in 1999 within the *Memorandum of Understanding*. Moreover, the enthusiasm for the formal machinery already appears to be waning. Their hierarchical structure, the non-binding nature of their agreements and the lack of a veto for the devolved administrations weakens the incentive for participation. The asymmetrical system, meanwhile, encourages both the UK and devolved governments to focus on bilateral rather than multilateral intergovernmental processes of exchange. Asymmetry and the lack of decentralised government for England, the largest nation of the UK by some distance, also weakens the incentive for the UK government to invest time and resources in elaborate intergovernmental coordination mechanisms.

Second, party political incongruence has produced more tension and stalemate than was evident in the era of predominant party congruence, especially in the case of Scottish-UK IGR since 2007, and Welsh-UK IGR since 2010. This has been most evident over issues of high political salience, for example, finance and home affairs.

However, these tensions have not so far erupted into major constitutional disputes nor have they involved the courts in the role of arbiter as has often been the case under conditions of party governmental incongruence in Spain and Italy. Although the Judicial Committee of the Privy Council, and now the Supreme Court, has a role in interpreting matters of *vires*, the political culture in the UK does not normally lead governments to resort to the courts. Similarly, although the JMC has now met in its dispute resolution mode, at the instigation of the devolved administrations, it is not altogether clear what they gained from this process. This is not wholly surprising. Even in dispute resolution mode, JMC meetings are chaired by a UK government minister (although one who is expected to be removed from the matter at hand) and staffed by a UK-led secretariat.

We should be careful not to exaggerate the extent of conflict, however. In Wales, there was as much tension in IGR prior to 2007 as there was afterwards, at least until 2010. This partly reflected Plaid Cymru's junior status and its desire not to jeopardise the referendum on primary legislative powers. It may also be a result of the changed inter-party dynamics within the National Assembly itself. When Plaid Cymru was the principal party of opposition and thus the main alternative to a Labour-led government, the Labour Party was compelled to play the Welsh card and accentuate the 'clear red (Welsh) water' between the Labour-led Welsh Assembly government and the UK Labour government. With Plaid in government as Labour's junior partner, the need to engage in the politics of small 'n' nationalism by accentuating difference diminished.

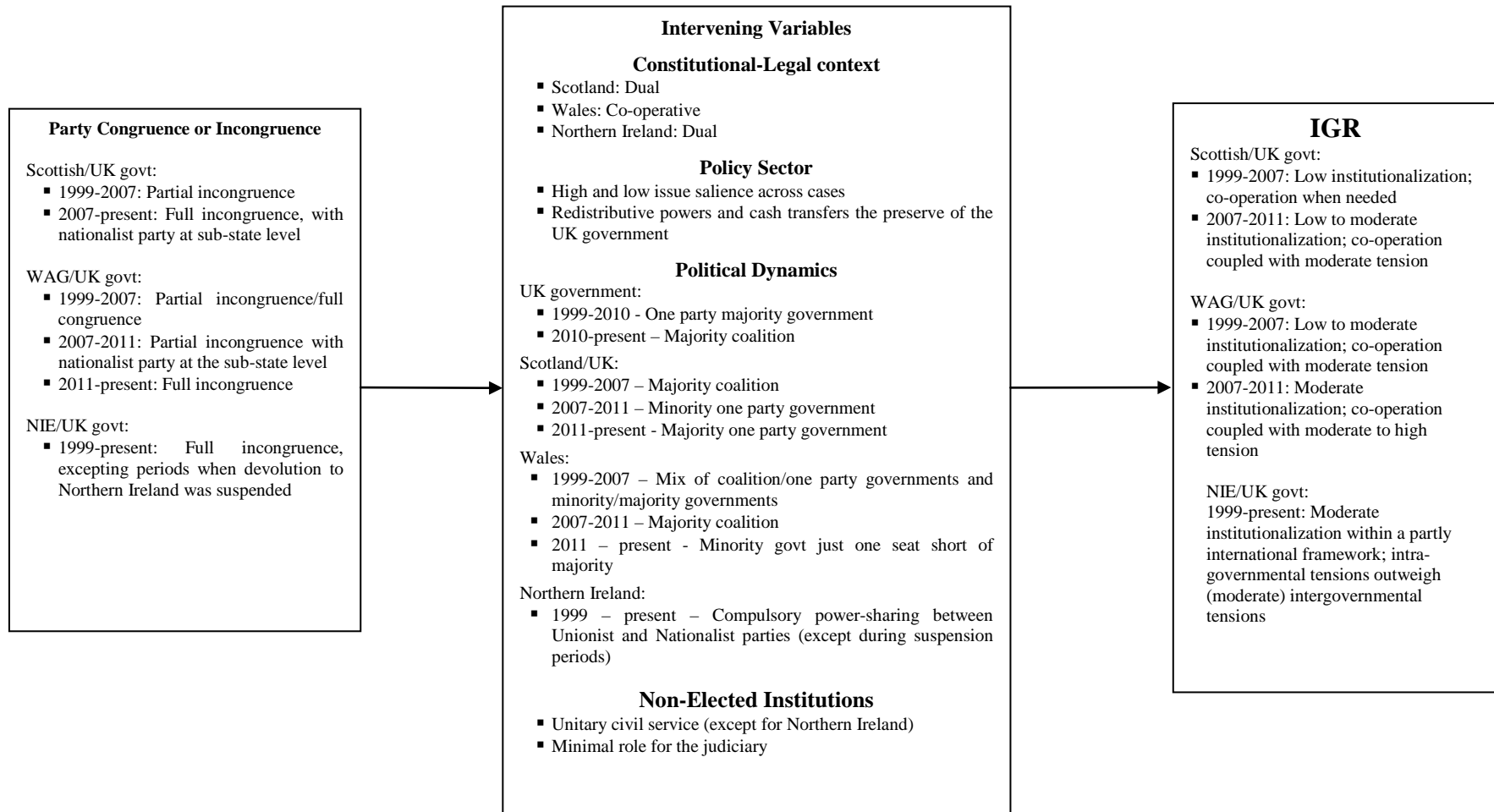
While the competing nationalist objectives of the Scottish and UK governments (before and after 2010) provides fertile ground for competitive and adversarial IGR, even here the media focus on constitutional ‘turf wars’ between the two governments masks a good deal of cooperation in policy areas where the policy objectives are shared. However, the need for intergovernmental coordination was less evident in Scotland than in Wales, given the latter’s (now diminishing) dependence on the offices of Westminster and Whitehall for primary legislation and consent for legislative competence. This need is also less evident in Scotland than in other multi-level systems with a less dual distribution of competences.

The change of government in the 2010 UK General Elections has altered these intergovernmental dynamics insofar as the severe budget cuts of the UK government have major financial repercussions for the devolved territories. Arguably, significant cuts (or considerable tax rises) would have been unavoidable, even under a Labour-led government at the centre. Yet, as we write the final sentences to this special issue, the biggest challenge yet to UK devolution has just emerged from the election of an SNP majority government in Scotland. In the short term, the SNP is likely to prefer its ‘insider strategy’, especially to gain further powers from the centre in revising the UK Scotland Bill. In the long run, however, a political fight with the centre on the future of the union is inevitable as the referendum on independence draws nearer. With just one Conservative MP from Scotland, and after the heavy losses faced by the Scottish Liberal Democrats in the 2011 parliamentary election, it is not clear how strong a fight the UK’s governing parties are willing to, or can, put up against the SNP to address nationalist grievances. As Keating puts it, there is a genuine risk that the more salient the Scottish constitutional issue becomes, the stronger also is the English

resentment at granting further concessions, in the form of more home rule or a stronger say for Scotland (and consequently the other devolved territories) in UK matters.

It remains to be seen how these UK-Scottish dynamics will generate spill-over effects on the multilateral framework for IGR (especially the JMC) and the bilateral UK-Welsh and UK-Northern Irish relationships. The Northern Irish example demonstrates that in understanding the effect of incongruence on the machinery and the dynamics of IGR, we need not only to pay attention to the nature of incongruence (with or without home rule parties in government) and the degree of incongruence (total or partial), but also to the broader legal, political and historical context in which that incongruence has emerged. Indeed, in a highly asymmetrical setting like the UK, distinct settlements shape the relations between each devolved administration and the centre. In this sense, the framework of devolution is fundamentally different from that of a federation in which vertical and horizontal asymmetries, if present, are less pronounced and party political incongruence is likely to generate more homogeneous effects on IGR.

Figure 1: *Party (In)congruence and the Dynamics of Intergovernmental Relations in the UK*



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Endnotes

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² These insights emerged from a discussion with senior officials, conducted under Chatham House rules, at an Institute of Government event in London, September 2011.

³ This may also have been peculiar to the Labour government of 2007-2010, dominated as it was by leading figures within the Scottish Labour Party. It may not necessarily be a sign of how a future Labour government would respond to party political incongruence.

⁴ At the time of writing, UK government ministers have recently threatened to ‘take over’ the process if the SNP government does not bring the referendum forward, or if it insists on holding a multi-option referendum. This would be an incredibly high risk strategy and thus seems unlikely.