

# **The Dynamics of Intergovernmental Relations in the UK**

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**Abstract:** This paper considers the dynamics of intergovernmental relations in the UK, assessing in particular the effect of party congruence and incongruence on the process and nature of intergovernmental co-ordination. Although the asymmetric, relatively informal and potentially hierarchical nature of intergovernmental relations makes the UK case hard to compare with mature federal systems, the low institutionalization of intergovernmental relations, the limited degree to which intergovernmental arrangements are integrated and the centrality of party political actors in mediating intergovernmental conflict (even under conditions of incongruence) are not unique to the UK and have much in common with the process of intergovernmental mediation in other multi-level states, such as Spain, Canada, Australia and Belgium. The paper thus draws on a broader comparative literature when developing the conceptual framework within which intergovernmental dynamics in the UK will be analysed.

**Keywords:** Intergovernmental relations, UK devolution, party political incongruence, comparative federalism

## **1. Introduction: Intergovernmental Relations in the UK as Conceptual and Empirical Challenge**

One of the traditional hallmarks of British parliamentary democracy has been its adversarial character. Even within the context of today's multi-party politics, political debate is dominated by competition between government and opposition. The adversarial character of British party politics is usually considered from a horizontal, mono-level perspective, when the government faces opposition from one or several parties in parliament. However, in multi-level systems, where power is divided between central and regional governments, opposition can also be played out vertically via inter-governmental relations (IGR), especially when governments at different levels are led by competing political parties (party incongruence). The emergence of party political incongruence in the composition of central and devolved government after the devolved elections of 2007 provides an opportunity to examine whether the adversarial tradition of British politics is played out in the intergovernmental arena.

Multilevel dynamics and intergovernmental relations have long been the prior focus of federalism research and in more recent years of Europeanization studies. It is a more recent concern in those non-federal or federalising states, such as Italy, Spain and the UK, which have undergone processes of devolution and decentralisation leading to the establishment or strengthening of sub-state tiers of government (Agranoff 1999; Swenden 2006). For the comparative literature, the UK is in many ways a particularly challenging case given its highly asymmetrical nature – the devolved territories control different competencies, while England is still governed from Whitehall. In the UK central institutions (Whitehall, Westminster) a culture of majoritarianism prevails which clashes with the 'functional need' to establish working relations between governments in this new, still evolving multilevel system. Yet, instead of stressing the UK's peculiarity and its limited comparability with other multilevel settings (as Trench does, for example [xxx]), this paper attempts to draw on the comparative federalism literature to provide an analytical placement of the UK system along a range of dimensions – or types of variables - considered to be important for the nature of intergovernmental dynamics.

Until 2007, the Labour Party was the dominant party of government across mainland Britain, governing at the UK level while leading government in Scotland (always in coalition with the Liberal Democrats) and Wales (in a sometime coalition with the Liberal Democrats, but latterly as the single party of government). The political landscape changed after 2007, with the arrival of an SNP minority government in Scotland and a Labour-Plaid Cymru grand coalition in Wales. Incongruence was reinforced by the restoration of the Northern Ireland Assembly, where a distinctive party system and consociational government produce permanent political incongruence vis-à-vis the rest of the UK. Party differences in the composition of state and sub-state government have thus become a dominant feature of UK intergovernmental relations, and this would be exacerbated if there were to be a change of government following the forthcoming General Election. It is therefore timely to assess whether party incongruence has generated a new climate in intergovernmental relations, transferring adversarial politics to the multi-level arena.

While we find more and more comparative studies looking at party dynamics in federal countries (e.g. Chhibber and Kollman, 2004; McKay, 2001; Filippov, Ordeshook and Shetsova 2004; Swenden and Maddens 2009; Thorlakson, 2003) as

well as a few comparative studies of party (in)congruence (Downs 1998; Thorlakson 2007), the systematic analysis of party (in)congruence in multilevel settings and its effects is still rare. Few studies focus on how parties *coordinate* policy-making vertically (between levels) or horizontally (with other regions) and on the structures supporting these processes (for some exceptions, see Laffin, Shaw and Taylor 2007; Bolleyer and Bytzeck 2009; Ștefuriuc 2009).

The paper proceeds as follows. First, we define basic concepts, most notably IGR and party political incongruence. We then set out the different types of variables that we expect to affect the impact of party political incongruence on IGR. Finally, we apply these theoretical insights to the UK case. We conclude by considering the implications of our findings for future comparative and case-oriented research.

## **2. Party Political Incongruence and Intergovernmental Relations**

The term ‘intergovernmental relations’ (IGR) captures “the working connections that tie central governments to those constituent units that enjoy measures of independent and inter-dependent political power, governmental control and decision-making” (Agranoff, 2004: 26). The term ‘relations’ can refer to *exchanges* between governments (e.g. the intensity of communication, the density of meetings or exchanges), to *patterns of interaction* (e.g. the regularity of meetings; the regularity of meetings between particular partners; dominant modes of interaction that might be more or less conflictual) and to *structures* that channel government interaction (e.g. the composition of and decision-making rules in intergovernmental institutions). How these three dimensions interact is crucial for any analysis of intergovernmental dynamics.

The extent to which IGR are shaped by party political congruence or incongruence in the party political composition of governments at each level may depend on the degree of incongruence. Governments in a multilevel system are considered incongruent if they are composed of different parties. Incongruence is complete if there is no overlap in the party political composition of governments, and governments at different levels are composed of distinctive parties (either in single party or coalition governments). If governments at different levels are only partially ruled by different parties, we may speak of partial incongruence. Whatever the effect of incongruence on IGR, it is expected to be more pronounced under conditions of complete incongruence, as presently is the case between the Scottish and UK government, but not between the UK and National Assembly for Wales government where partial incongruence prevails.

Party political incongruence can be expected to affect IGR both in an *organizational* and in a *programmatic* sense. First, parties can provide important *organizational* linkages bridging jurisdictional divisions. When operating within different constituent governments and on different governmental levels, they fulfil an important integrative function and facilitate policy coordination by providing channels for information exchange and conflict resolution. Conversely, the absence of such organizational linkages during periods of party incongruence can heighten conflict both horizontally and vertically (Lehmbruch 1978). Second, party incongruence is likely to exacerbate the *programmatic* differences between tiers of government. This can complicate the intergovernmental coordination of legislative and policy outcomes necessitated by overlapping competencies and spill-over effects.

A specific situation of incongruence emerges where regional governments are composed of non state-wide parties, especially where they advocate for greater

regional political autonomy of secession from the state (de Winter and Türsan, 1998; Hepburn 2009). Their territorially concentrated support base frees these parties from the need to draw upon electoral support outside of their region. As a result, they can more easily put regional interests first. Normally the pursuit of territorial interests is associated with a tendency to claim policy ownership and guard the autonomy of regionally allocated competencies (McEwen, 2005). However, it is also possible that in a resource poor region, regional interests may be best pursued by accessing sufficient federal resources. To that end, such regions may seek collaboration with the centre or other like-minded regions, even when led by a non state-wide party. Thus, a more collaborative approach to IGR (horizontally and vertically) cannot be excluded.

In assessing the impact of party congruence and incongruence on IGR, we consider two dimensions: (i) the degree of *formalization* or *institutionalization* of the processes of intergovernmental exchange; and (ii) the *nature* of intergovernmental interaction and policy co-ordination.

The degree of *formalization or institutionalization of intergovernmental relations* concerns the machinery of intergovernmental relations. This can range from irregular ad hoc coordination between ministries, as in Spain and Canada, to intergovernmental secretariats with dozens of employees, as in Switzerland and the United States (Bolleyer 2006; 2009; ). To assess whether the intergovernmental machinery had changed with the occurrence of party political incongruence, we consider: whether core groups of government representatives meet more or less regularly in core intergovernmental fora or councils; if there have been increased resources allocated to the servicing of these councils, for example, in the form of secretariats to prepare meetings and provide expertise; if the decision-making rules of these councils have changed or were applied differently in practice; and whether new structures have been created or are evolving to handle intergovernmental processes efficiently despite party political incongruence.

Two scenarios are possible. We might expect that the institutionalization of IGR to be hardly affected by party incongruence since party politically incongruent governments may want to have as little to do with each other as possible. On the other hand, incongruence may have accelerated the need for formalized IGR since the mechanisms of intra-party coordination between and across levels cannot be activated, necessitating the need for more intergovernmental co-ordination mechanisms.

In examining *the nature of intergovernmental relations*, we are concerned with the extent to which party political congruence contributes to co-operation and collaboration and, conversely, whether party incongruence engenders a more antagonistic or conflictual intergovernmental relationship. Key here is whether party incongruence encourages government at either level to take more unilateral action, without consulting other governments within the state, or whether partisan differences have made intergovernmental interaction less reliable and more ad hoc. Conversely, governmental actors may try to deliberately counteract (anticipated) party political conflict by making more intense efforts towards joint decision-making. We might expect more unilateral action under party incongruence because of the heightened mutual distrust between the party actors in the intergovernmental relationship and the desire of these actors to defend their autonomy as a result. On the other hand, as intergovernmental relations are the only substitute for coordination through party channels (using the vertical and horizontal linkages of the state-wide party in question) we might find more traces of *open* (or extra-party instead of intra-party) co-decision or collaboration.

Intergovernmental interaction does not, by itself, guarantee intergovernmental agreement and we might expect party incongruence to be associated a tendency toward stalemate in areas that require intergovernmental coordination, or generates outcomes that are more favorable (through hierarchy, persuasion) to one governing party in the relationship. The central issue here is to consider the outcome of intergovernmental negotiations from the viewpoint of whose interests they most closely approximate. For instance, knowing the initial position that parties take on issues of mutual concern, is the policy that is finally adopted situated more closely to the policy preferences of one or other party or parties in the intergovernmental relationship, and if so, is this the result of wielding any particular hierarchical resources? We hypothesise that under conditions of party incongruence, divergent policy preferences can produce stalemate where lower level governments are in a position to wield a veto-power, but could trigger unilateralism by higher-level governments where the consent of the other partner or partners in the intergovernmental relationship is not required. In other words, the nature of the multi-level setting (federal vs non-federal) is likely to have a strong intervening effect on the eventual outcome, as discussed below.

### **3. Intervening variables affecting the effect of party composition on intergovernmental relations**

Party competition is not the only determinant shaping the character of intergovernmental relations. The comparative literature on IGR points to a variety of factors driving intergovernmental dynamics. These can be grouped into four categories, (1) *formal-legal features of a multilevel polity* (2) *policy sector* (3) *political dynamics within the constituent governments*, and (4) the role and structure of *non-elected institutions* such as the civil service or the judiciary. Each of these types of variables, discussed in turn below, can be expected to mediate the relationship between party political incongruence and IGR (be it in terms of the nature of processes, intergovernmental infrastructures or coordination outcomes), either by accelerating the level of conflict, moderating it or shifting conflicts to a less politicised arena.

#### ***(i) Formal-legal Features and their Impact on IGR***

*Federal v Devolved:* It is a prominent assumption in the comparative federalism literature that constitutional categories – most notably the distinction between *federal and non-federal systems* - are important for the nature of intergovernmental dynamics (Elazar, 1993; Watts 1998; 1999). Federal systems give constituent territorial units a direct say in competence (re)allocation. Consequently, they have a right of veto over any proposed changes over the distribution of power (expressed, for example, via direct representation in second chambers, in intergovernmental negotiations, or through popular consent.<sup>1</sup> Non-federal systems – although they might be considerably decentralized or regionalized - give the central level the final say on such matters, thereby creating ‘a shadow of hierarchy’ (Héritier and Lehmkuhl 2008).

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<sup>1</sup> If their consent is required by referenda, this usually requires a double majority (i.e. a majority of the voters in the polity overall, representing a majority of the territorial units in the polity).

Where party incongruence arises, central governments in non-federal systems can invoke this ‘shadow of hierarchy’ to resolve intergovernmental coordination problems resulting from party political differences. Likewise, we might expect subnational governments in non-federal systems to downplay their (party political or other) differences and engage in a more cooperative approach to maximise their influence. In contrast, subnational governments can afford to adopt a more non-cooperative approach in federal systems since their constitutionally guaranteed autonomy protects them from the threat of unilateralism by the centre (Riker 1964, Thorlakson 2007; Bednar 2009; Bolleyer 2009).

The distinction between federal and non-federal states is also important when assessing intergovernmental processes and infrastructures. In federal systems, lower-level governments can more easily safeguard their autonomy, a situation which is conducive to their engagement in multilateral (horizontal and vertical) structures of coordination. Such coordination 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 (i.e. more profitable) in federal contexts. In non-federal systems, individual lower-level governments can be excluded more easily from policy coordination and from debates on the reallocation of competencies by the centre. Multilateral coordination structures are likely to be weaker and lower-level governments will tend to resort to bilateral strategies of coordination with the centre. At the same time, if party political differences have a stronger impact on IGR in federal than in non-federal settings, the institutionalization and the actual working of multilateral institutions can be expected to suffer in times of high party political incongruence, while in non-federal systems, the bilateral interaction between individual lower-level governments are likely to remain less affected.

*Asymmetry versus Symmetry:* Federal and non-federal systems alike demonstrate varying degrees of symmetry and asymmetry. However, the tendency toward asymmetry is most pronounced in some recently devolved or quasi-federal states, such as Spain and the United Kingdom or in federacies such as Greenland in relation to Denmark or Finland in relation to the Åsland Islands (Elazar 1988). The asymmetrical distribution of competences between sub-state units can influence the perceived benefits of pooling weight with other lower-level governments to gain a stronger position towards the centre. For weak governments, this strategy is generally useful but stronger sub-state units might get a better deal when negotiating bilaterally with the centre. The centre, meanwhile, might be more willing to grant them concessions in light of their strength, without necessarily empowering the sub-state level as a whole. Thus, symmetry is more conducive to multilateral interaction, regular co-decision and the institutionalization of IGR than asymmetry, which puts a strong premium on bilateralism and flexibility.

*Shared and exclusive competences:* The allocation of powers between levels can influence the nature and process of intergovernmental interaction. In dual systems of multi-level government, each level implements its own legislation and controls an exclusive set of competencies, thus minimizing the need for interaction and co-operation. By contrast, more cooperative systems start from a functional division of powers in a wide range of policy areas (i.e. lower-level governments implement legislation passed by the federal legislature). The German case is often used as the

classic example of co-operative federalism, while other federal systems such as Switzerland and Austria correspond to this model only partially (e.g. Benz 2004; Bolleyer 2009; Braun 2003; Lehmbruch 1978; Scharpf 1988). In Germany, the *Länder* participate in federal policy-making through their direct representation in a powerful upper house, which compensates for the de facto concentration of law-making at the federal level, strongly interlocking the two levels of government and promoting intergovernmental co-ordination. Where competencies are exclusively assigned to each level of government, the need for legislative and administrative intergovernmental co-ordination is minimized, and we would therefore expect to find weaker intergovernmental institutions, irrespective of the party composition of government. On the other hand, we cannot rule out that regional governments in dual settings engage in horizontal co-operation and develop the appropriate intergovernmental machinery to offset (the threat of) central pre-emption, which arguably is larger in a dual multi-level context (Braun 2000).

### ***(ii) Policy Sector***

The nature and degree of formalization of IGR is also affected by the policy sector under consideration. The relevance of particular policies for voters, as well as their respective financial implications, affect their placement on government priority lists. We can also observe variation in the degree of conflict that characterize certain policy fields. Policy debates that are highly salient politically attract greater media attention and are likely to be handled by premiers or senior ministers, with tensions spilling into the public arena. Less politicized policy issues might be the responsibility of junior ministers or senior or middle-ranking officials who are more problem-oriented and less dominated by strategic political considerations. 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. For instance, fiscal and welfare policy, because of its highly redistributive nature could be classified as a 'high conflict area'. On the other hand, fiscal issues tend to be more technical and draw in smaller policy communities, perhaps reducing the extent of public exposure and debate. Conflict can also be intense in intergovernmental negotiations over development programmes, for instance regional policy or transport policy, since they usually involve large sums of money. Less conflictual IGR could be expected in policy fields that are highly technical and regulatory, or where governments at different levels broadly share policy goals. Environmental regulations (for example, housing insulation or carbon emissions reductions targets) may be an example of this. Consequently, we might expect party political incongruence to have a greater impact on the nature and outcome of intergovernmental negotiations in highly politicised policy arenas. The effect of incongruence in highly technical and regulatory issues may be more muted.

### ***(iii) Political Dynamics within the Constituent Governments***

As Benz observed, *intra-governmental relations* - the nature of executive-legislative interactions within each level of government - can shape *intergovernmental relations* (Benz 2004: 133). The distinction between one-party and coalition governments is crucial here, as is the relative strength of government at each level. Governmental tiers which usually produce one-party majority cabinets tend to have a

more frequent turn-over of parties of government, raising the costs to maintain steady interaction and to build strong infrastructures to channel intergovernmental processes (Bolleyer 2009). 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 exchanges. This may be exacerbated where the party system operates across the boundaries of political institutions, where the party of government at one level is the principal opposition party at another level. The relative strength of governments at each level may also play a part. Minority governments are sometimes weak governments and the effort invested in the need to secure sufficient parliamentary majorities to implement their agendas diverts attention and energy from the intergovernmental arena. Majority governments face fewer such constraints and can use their parliamentary majority to strengthen their hand in intergovernmental negotiation.

#### ***(iv) Non-elected Institutions and their Effect on IGR***

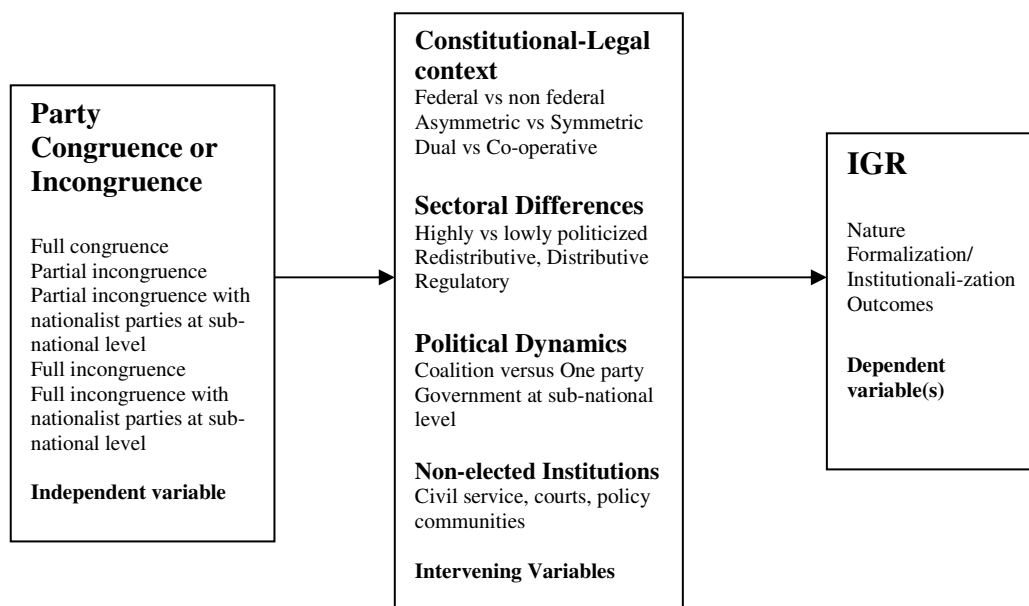
The effect that party incongruence has on the process and nature of IGR is also mediated by the structure of the non-elected institutions surrounding them. Party incongruence is likely to matter less where the senior civil service has retained a politically neutral character or is still part of an integrated state-wide civil service. On the other hand, the capacity of the civil service to mitigate intergovernmental conflict and to foster intergovernmental collaboration is much reduced where the civil service itself is strongly politicized or where politicians delegate executive or policy formulating tasks to political advisers or groups outside the civil service structure.

Party incongruence may also matter less due to the strength of local policy communities, for instance in health, education, employment, regional development, welfare or culture. These communities may have distinctive territorial interests and a strong tradition of advising governments or civil servants on policy formulation and implementation, irrespective of who holds power at the central or regional level.

Finally, the judiciary can potentially influence the intergovernmental relationship. Pre-emption or intergovernmental strife may be less common where partners in the intergovernmental relationship have the capacity to take matters to court. Where access to judicial proceedings is not equal for all partners in an intergovernmental relationship (a possibility in non-federal settings in particular), the shadow of hierarchy may work in favour of the strongest partner (usually the central government) and force lower level governments into a more 'cooperative' or accepting strategy.

Figure 1 summarizes how we see the relationship between party (in)congruence and IGR, and especially how this relationship may be mediated by the intervening variables discussed above. This will be used to identify the distinctive features of the UK system to help understand better the effect of party congruence and incongruence on UK IGR.

Figure 1: The relationship between Party (incongruence) and Intergovernmental Relations



#### 4. Party Congruence and its Effect on Intergovernmental Relations in the UK

What has been the effect of party (in)congruence on the various dimensions of intergovernmental relations that we identified in the UK? To answer this question we have sought to analyze IGR before and after the devolved elections of May 2007. We take May 2007 as our cut off point, separating a period of predominant party congruence (1999-2007) from greater party incongruence (2007-). This makes sense for Scotland, where the replacement of a Labour-led coalition with the Liberal Democrats by a SNP minority government signified a clear political rupture, generating full vertical incongruence. We believe that the shift from a single party Labour government in Wales to a coalition between Labour and Plaid Cymru – the two largest parties in the National Assembly - also marks a watershed. We exclude Northern Ireland from the analysis for now, as there has been no variation on our key independent variable (the distinctive party system and power-sharing arrangements make vertical incongruence a permanent feature in the NI-UK intergovernmental relationship) and devolution was frequently suspended during its first decade.

Clearly, the entrance of nationalist parties to government in Scotland and Wales has added a new dimension to IGR. To varying degrees, the SNP and Plaid Cymru seek greater self-government for their respective nations and their territorial objectives are not shared by the UK Labour government. Ideologically, however, they all lean towards the centre-left, both on the traditional Left-Right and on the New Left-New Right dimensions of issue competition (REFS). In this sense, the programmatic differences between the UK and devolved governments can be expected to increase further if the forthcoming UK general election produces a Conservative government.

In the next sections we first address the extent to which party congruence contributed (or prevented) more formalized or institutionalized IGR, and assess its effect on the nature and outcomes of intergovernmental co-ordination.

### *(i) Intergovernmental Processes in Scotland and Wales 1999-2007*

#### *Scotland*

The *processes* of intergovernmental relations in the first eight years of devolution were scarcely formalized. The key multilateral body that was set up to streamline intergovernmental relations, the Joint Ministerial Committee, proved to be of relatively little significance (Trench 2007: 62). Although it was set to meet annually, in plenary session, the JMC met only three times: September 2000, October 2001 and October 2002, but not thereafter (Trench 2004: 514). Trench suggested that each of these meetings had a 'ritualistic air' (Trench 2004: 514), providing a 'state of the art' of the devolution settlements and approving slight amendments to the Memorandum of Understanding between the UK government and the devolved administrations.

With the exception of the JMC Europe, which on average met five times a year, the JMC also met very infrequently in its 'functional format' (Trench 2007: 167). 'Functional' JMC meetings were intended to bring together UK and devolved ministers in a specific policy area. Such meetings were established for Health Policy, the Knowledge Economy and Poverty, but as was the case with regard to the plenary sessions, they were ad hoc and very infrequent: economy and health met several times between 1999 and 2002, but not thereafter, while the poverty JMC met several times between 1999 and 2000, and then not again until 2002.

Yet, in explaining the low institutionalization of intergovernmental relations, we can easily refer to some of the intermediary variables that were touched upon above. First, the multilateral composition of the JMC may not suit the asymmetric nature of UK devolution, which requires a more bilateral approach, or 'a management of the parts, rather than a management of the whole' (Jeffery 2008). Bilateral meetings are plenty, for instance, monthly on agricultural issues and about twice a year on fiscal matters (chaired not by the Chancellor, but by the Chief Secretary to the Treasury; Trench: 2004: 516). In presenting evidence to a recent enquiry into Devolution to the House of Commons Justice Committee, Jack McConnell, the longest serving Scottish First Minister (2001-2007) suggested that a conscious decision – on the part of both levels of government – had led to the abandonment of the JMC framework. In his evidence to the committee [HCJC Uncorrected evidence, 22 April 2008], he argued that:

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

As discussed above, asymmetrical systems are often associated with a low institutionalization of *multilateral* intergovernmental exchanges, but this cannot explain the absence of strongly formalized *bilateral* UK-Scottish intergovernmental relationship. It is plausible to assume that party political congruence – and the intra-party channels for communication and policy co-ordination this opened up – helps to

at least partially explain the lack of formal institutionalised intergovernmental processes. However, we can identify four additional factors which contributed to the informal character of IGR in this period.

First, the formal-legal structure of multi-level government in the UK is *non-federal* and as such may be more conducive to flexible and non-formalized intergovernmental exchange. Parliamentary sovereignty invests in the UK parliament (and hence, the government in parliament) with the right to legislate in matters devolved to Scotland and, in theory, to override legislative decisions taken by the Scottish Parliament. However, by convention, the UK Parliament does not legislate on devolved matters without the consent of the Scottish Parliament. Legislative Consent Motions (previously referred to as ‘Sewel motions’) in which the Scottish Parliament authorizes the UK Parliament to legislate in Scottish devolved policy were used frequently in the first eight years of devolution (82 motions were passed between 1999 and April 2007). These motions were perceived by UK and Scottish governments to be of mutual benefit: they provided an important vehicle of policy co-operation and adjudication in a non-judicial way, they freed up some of the Executive’s time for important matters, they may have prevented judicial conflicts on competence issues, and they enabled the UK government to lead on policy innovation (Horgan, 2004: 118). Legislative consent motions also contributed to offering a more integrated approach to policy (Cairney 2006). For instance, civil partnership is a devolved competence, but social benefits and pension rights are reserved. By having a Scottish Executive delegation join up with the Westminster team responsible for preparing a draft civil partnership bill, a joint legislative process at Westminster could be initiated (Parry 2004: 57). Finally, these motions contributed to a uniformity of policy standards where this was deemed appropriate, for instance, with regard to health protection or food standards (Cairney, 2006: 435).

Second, the lack of formalized channels for intergovernmental coordination can also be seen to reflect the relatively dual arrangement that underpins Scottish-UK devolution. With devolution, a large and cohesive set of competencies was transferred from the UK Scottish Office to the Scottish Parliament and Executive. The Scottish Parliament acquired legislative competencies of a mainly distributive character, for instance in transport, agriculture, education and health and the Scottish Executive was made entirely responsible for their implementation. However, the Scottish administration (like its Welsh and Northern Irish counterparts) is heavily dependent on fiscal transfers from the UK government, but the method of calculating changes to the level of the Scottish block grant is pre-determined by a formula (the Barnett formula) and so, the need for recurrent intergovernmental coordination is not there (see Bell and Christie, 2007: 73-74). Furthermore, the fiscal transfer is entirely ‘unconditional’ and the devolved territories are allowed to spend it as they see fit. Intergovernmental coordination is largely confined to some subjective decisions that the UK government still makes on what particular matters attract consequential payments for the devolved authorities and to the constraints imposed on spending by Treasury rules and expenditure limits (House of Lords, 2008: 23). The former relate only to a relatively small set of expenditures while the latter may appear less constraining during periods of significant expenditure growth that marked the first eight years of devolution.

Third, devolution did not emerge out of the blue. The development of the UK as a ‘union state’ included territorial offices implementing legislation passed in the UK parliament for Scotland, Wales and Northern Ireland, and exercising a degree of administrative autonomy in the process (Mitchell 2003). ‘Standing operating

procedures' that governed the 'horizontal' coordination between these regional offices and individual Whitehall departments or the Cabinet Office were largely copied as mechanisms of vertical coordination between Whitehall and the governments of the devolved territories. The Memorandum of Understanding, Devolution Guidance Notes and mechanisms for informational exchange between the devolved governments and UK Whitehall departments borrowed heavily from these intra-governmental mechanisms of policy coordination. For instance, concordats can be understood as 'path-dependent' instruments for intergovernmental coordination, which applied the process of informational exchange, representation and co-operation which existed between the territorial offices and the relevant functional departments in Whitehall *prior* to devolution to the relationship between the latter and the devolved administrations (Poirier 2001: 150). In turn, the UK retained distinctive (slimmed down) territorial offices intended to articulate Scottish, Welsh and Northern Irish interests in the UK government, while at the same time representing UK governmental interests in Scotland, Wales and Northern Ireland, and facilitating intergovernmental co-ordination between governments at each level.

Fourth, devolution also left another aspect of British politics intact, namely the retention of a single UK civil service. With the exception of Northern Ireland – which had a distinctive civil service long before Northern Irish devolution was reinstated in 1999 - civil servants who work for the Scottish or Welsh Assembly governments have remained part of the UK Home Civil Service. The career paths, criteria for recruitment, remuneration or pensions of civil servants are squarely determined at the state-wide level (formally the PM also heads the Civil service). On the other hand, civil servants working within the Scottish or Welsh administrations are accountable to Scottish ministers or Welsh Assembly secretaries. Many had worked previously for the Scottish or Welsh Office. Senior civil servants in these territorial offices often tended to spend part of their training in the Cabinet Office or Treasury where they became versed in the ways of Whitehall (Keating 2005: 102). In the initial years of devolution, these personal networks contributed to a fluid exchange of information across territories, without in fact having to revert to formal coordination mechanisms. Furthermore, unlike in many federal or multi-level regimes, the politically neutral character of the civil service, helped it to micro-manage devolution and contributed to preventing certain intergovernmental issues from turning into matters of intergovernmental dispute.

### *Wales*

The observations that were made above with regard to Scotland also hold for Wales. There are very few formalized mechanisms for coordinating inter-governmental exchanges. Asymmetry, the path dependent effect of pre-devolution mechanisms for informational exchange between the Whitehall ministries and the then Welsh Office at the level of the civil service, and the congruence in the party political composition of the UK and Welsh governments have all contributed to this. Yet, there is one very important difference between Welsh and Scottish devolution. The constitutional-legal context of Welsh devolution is significantly different from the context in which Scottish devolution operates. The Government of Wales Act (1998) entrusted Wales with the power to make delegated legislation within the framework of existing primarily legislation passed at Westminster. Put differently, the power of the National Assembly is derived from 'functions under existing Westminster statutes or legislation' or powers conferred on it under subsequent Westminster Acts (House of Lords, 2002: 35). Through TFO's (Transfer of Function

Orders) the Secretary of State for Wales and Westminster (Welsh Affairs Select Committee) could transfer respectively executive functions and subordinate legislation to the National Assembly. In this first eight years, the National Assembly operated as a de facto corporate body. The transferred executive functions were delegated to Assembly ministers (until 2000 referred to as Assembly secretaries) who exercised them on behalf of the National Assembly, but subject to their scrutiny. Proposals for general subordinate legislation on the other hand were considered by the National Assembly as a whole.

Unlike devolution to Scotland then, from the very beginning, the Welsh settlement set a context in which close collaboration between the Welsh Office and the Secretary of State for Wales, Welsh MPs and Welsh AMs in Cardiff Bay was mandatory for the system to work. Thus, the legal-institutional framework necessitated much closer intergovernmental cooperation between the UK and Welsh governments than between the UK and Scottish governments. In light hereof, the lack of more formalized coordination mechanisms is surprising and creates a danger of central unilateralism or neglect.

Coordination however happens, and to make it possible the Wales Office employs about 60 staff members in London and Cardiff, about 14 of whom are senior civil service appointments. By and large, this is a small office, although somewhat larger than its Scottish counterpart (about 55 personal worked for the Scotland Office in London or its Edinburgh division in 2009, all of them on secondment from the UK Ministry of Justice or the Scottish government – SO, London, annual report 2009).<sup>2</sup>

Neither the Welsh Assembly Government, nor the National Assembly for Wales received any *formal* role in the UK Parliament's legislative process where it discussed primary legislation affecting Wales. While the role of the Wales Office is to represent Welsh territorial interests in the UK government (and to represent the UK government in Wales), the Wales Office does not provide the functional equivalent to intergovernmental mechanisms such as they exist in some of the highly co-operative multi-level designs elsewhere. For instance, in Germany the Land governments directly influence federal legislation through the Bundesrat (federal second chamber) and do not rely on a 'federal minister of the Länder' let alone on a federal minister representing their Land to do so on their behalf. As we will discuss in the section on the nature and outcomes of intergovernmental coordination below, informal channels have not made up for this lack of formalized access (through the secretary of state for Wales – Commons Welsh Affairs Committee of Commons Welsh Grand Committee; Winetrobe, 2003: 67).

The pressure from Welsh Labour AMs and Plaid Cymru (and the campaign from popular Labour 'First Secretary' Rhodri Morgan for stronger cooperation procedures with Westminster and more Assembly powers) generated an important revision of the Government of Wales Act in 2006. As a result of this, Wales obtained the prospect (subject to referendum) of full primary legislative powers, with the possibility of acquiring incremental legislative powers in the interim (i.e. following the 2007 Assembly elections, see below).

The stark difference between the Scottish and Welsh devolution settlements in the allocation of primary legislative competencies is not replicated in the mechanisms for funding Wales. The financial arrangement is similar to that for Scotland and Northern Ireland in that the Assembly has full discretion in determining spending priorities within the Welsh block grant. However, Welsh discretion is affected by

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<sup>2</sup> <http://www.scotlandoffice.gov.uk/scotlandoffice/files/SO%202009.pdf>

what is listed in the Comprehensive Spending Review, which sets out priorities for future expenditure. For instance, targets which the CSR envisages for educational achievement (in England) are also binding on the Welsh Assembly government (Laffin et.al.: PQ: 230).

## ***(ii) The Nature of IGR in Scotland and Wales 1999-2007***

### *Scotland*

The absence of highly formalized intergovernmental relations did not prevent (or perhaps is illustrative of) UK-Scottish IGR to be relatively co-operative, and trouble-free in the first eight years of devolution (House of Lords Committee on the Constitution, 2002; Horgan 2004; Trench 2005, 2007, Laffin, et.al., 2007). Co-operation, rather than confrontation, was the dominant mode of intergovernmental interaction. But cooperation was also by and large ad hoc; it only emerged when it was deemed necessary. In other words, co-decisions (requiring the consent of both levels of government) have been relatively rare. Legislative Consent Motion, discussed above, are notable examples of *co-decision* mechanisms between the UK and Scottish governments, but this extent of co-decision is not evident in other intergovernmental channels.

Ad hoc coordination may suffice where the framework in which self-rule is exercised is dual and asymmetric, as is mostly the case in the UK. Furthermore, since Scotland, Wales and Northern Ireland lack a common border, externalities are bound to arise between England (represented by the UK government) and Scotland, or England and Wales or the UK and Northern Ireland (and Ireland). This makes the need for horizontal intergovernmental coordination redundant, beyond the occasional meetings among representatives of the senior civil service from the Scottish or Welsh Assembly governments in the so-called 'Celtic Forum'. The latter is meant as a forum for sharing best practices, rather than for the coordination of concrete horizontal intergovernmental concerns (ESRC Seminar Series on IGR, June 2009).

The prevalence of ad hoc coordination during this period gave rise to two types of concerns. First, within the realm of intergovernmental relations proper, did Scotland's devolved government lose out as a result of the lack of joint decision-making within an institutionalized intergovernmental framework? Second, was ad hoc coordination sufficient and necessary, given that issues of intergovernmental contention were often resolved through intra-party mechanisms of multi-level coordination between the Scottish and UK Labour branches?

Opinions on whether the absence of more structured 'executive summitry' meetings would have benefited Scotland vary. To some, the failure of the JMC (in plenary or functional format) to develop into the pinnacle of intergovernmental affairs is a matter of real concern. In reviewing the UK response to the outbreak of Foot and Mouth and its coordination with the devolved territories on this matter, the Lords Committee argued that '*it would be dangerous to assume that future crises affecting devolved functions will be capable of being solved in the same [informal, bilateral] way*' (House of Lords, 2002, chapter 5). Informal mechanisms, so Trench argues, still need to work within a formal framework, for 'if the framework is abandoned, informal mechanism will become increasingly ad hoc and reactive, rather than integral to government.... The value of the JMC is that it spurs other meetings to take

place within the structure of formal meetings' (Trench, 2004: 516).<sup>3</sup> Jeffery echoes these concerns, by considering the current intergovernmental machinery as 'not fit for purpose' (House of Commons Justice Committee [HCJC], 2007). In evidence to the same Commons committee, Sir John Elvidge, Scotland's highest ranked civil servant, remarked that 'there was a purpose behind the JMC mechanism to allow sharing of thinking at the most senior ministerial levels and to allow for some preliminary exploration at least of intractable disagreements, *which is not obviously being fulfilled by any other piece of machinery at the moment.*' (HCJC, uncorrected evidence, 26 February 2008, italics added).

However, one could question the effect that a more frequent activation of intergovernmental coordination mechanisms would have on serving Scotland's interests better. In fact, a closer look at how the intergovernmental coordination mechanism operates may make coordination through party channels a more attractive alternative. The intergovernmental mechanisms contain a "central bias" in three important ways. First, neither the Joint Ministerial Committee (JMC) nor the concordats generate legally binding decisions, notwithstanding their characterization of the latter as *soft law*<sup>4</sup> (Poirier 2001: 148). Second, some intergovernmental procedures cannot be activated without the consent and initiative of the UK government and rely on UK administrative support. For instance, JMC meetings can only be convened by the UK government (although the devolved entities could request them) and are chaired by an appropriate UK minister. The UK government (formerly through the Cabinet Office, but now the Ministry of Justice) takes the lead in staffing the Joint JMC secretariat, although staff of the devolved administrations may be seconded to it. Finally, in view of the (legally) non-binding character of intergovernmental outcomes, a refusal to live up to the intergovernmental procedures as specified in the MoU would not punish all parties to the same degree, simply because they do not start from identical positions in terms of resource strength. If parties do not observe the 'rules' of the MoU, for example, if they were to breach confidentiality, they could be denied access to relevant information in the future. It is not difficult to see why Scotland would lose out more from being denied access to key ministries in Whitehall than would Whitehall from being denied information from the Scottish Executive (Trench 2007b: 63-64).

The ad hoc and outwardly co-operative approach to intergovernmental relations has sometimes been attributed to party pressure from the UK party executive and office on the devolved branches. However, some recent academic analyses have questioned the hierarchical influence of the UK Labour party on policy matters. The Labour Party is certainly very centralized in its control and allocation of fiscal and

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<sup>3</sup> An additional benefit of formal meetings, such as the JMC is that they may still issue communiqués, whereas little is known of bilateral intergovernmental relations, thereby complicating effective scrutiny by the relevant legislative committees or plenary. While the Scottish Parliament or National Assembly for Wales could scrutinize the Executive on such issues and address them during First Minister's Question Time, the scope for buck-shifting or hiding oneself behind broader party interests is undoubtedly larger.

<sup>4</sup> For instance, Poirier emphasizes the 'de facto' binding nature of concordats; she compares them with 'soft law instruments, with a slightly harder edge' (Poirier, 2001: 155). They are 'internal directives [or administrative regulations] which can have a major influence on the priorities and culture of a civil service, despite their lack of legal underpinnings' (Poirier, 2001: 155). Their on-line publication adds to their 'de facto' binding nature (<http://www.scotland.gov.uk/About/concordats>).

administrative resources, but the selection of a regional party leader (after some initial hiccups in Wales in 1999) is now a rather decentralized affair (Laffin, Shaw and Taylor, 2007: 95-96; 101-102; Bradbury 2009). Furthermore, the Scottish party branches each have their own Policy Forums; their proposals must be approved by the Scottish or Welsh Party Conferences (in which there is no specific representation for the UK party). Following devolution, the regional Forums acquired full decision-making (instead of advisory) authority in devolved matters. Similarly, the committees which are responsible for drawing up the regional party manifestos are solely composed of representatives of the regional party or party organization.

In general, Laffin et al. assert that although in the period between 1999 and 2007 the 'Edinburgh and London parties-in-office have come closer into line, there is no evidence... that the realignment was *produced* by pressure from the centre' (Laffin, Taylor and Shaw, 2007: 99). For them, the real cleavage within the Labour Party is not between the centre and the periphery, but between the party-in-office (the parliamentary and governing party) in London, Edinburgh and Cardiff on the one hand *and* the unions and constituency organizations on the other (*ibid*: 101). However, it would be a mistake to consider devolution as an entirely conflict-free zone during the period of party congruence. Occasionally, the Scottish Executive encountered the limits of how far it could go in deviating from the preferences of the UK government, even if it operated entirely within its own areas of competence. Policies of the devolved authorities especially ran into Whitehall opposition where they could damage the broader redistributive policy goals of the UK Labour Party. On these grounds, Greer has referred to devolution as a 'fragile' divergence machine (Greer 2007: 136). Two examples illustrate this. The first example relates to a decision of the Scottish Executive to offer compensation for Scottish patients who were accidentally contaminated with the Hepatitis C virus during the 1980s after receiving a contaminated blood products (BBC Scotland news, 25 February 2003). The Scottish policy was perceived as problematic for two reasons: the Scottish scheme would be more generous than that planned by the UK government for English citizens who were in a similar position; and secondly the Scottish policy was seen as infringing on the UK government's exclusive competence to provide cash payments to individuals. Furthermore, the UK government argued that the Scottish Executive had acted outside of other constitutional boundaries, as it deemed injury and illness (unlike health) to be a reserved matter, and threatened to reduce benefit payments to those patients receiving Scottish Executive compensation (Cairney, 2006: 433). In the end, a UK-wide compensation scheme was agreed after a political agreement was reached between the Scottish Executive and the Department of Health.

The second example refers to the Scottish Executive's decision to introduce free personal care for the elderly, and in particular, the refusal of the Department for Works and Pensions to countenance a request for a fiscal transfer equivalent to the £23 million approximate amount which need no longer be accessed by Scottish elderly citizens via UK Attendance Allowance payments. This example reveals the potential for policy interdependence even in a system which approximates a dual character. It also underlined the Scottish government's fiscal dependence on the UK government, even though the constitutional right of Scotland to provide free personal care was beyond doubt. It also demonstrated a potential for tensions to emerge as a result of partial congruence. Although the UK Labour Party was clearly displeased with the Scottish Executive's decision to endorse free personal care, Laffin et.al. (2007) suggested that Scottish Labour was strongly divided on the issue itself and probably would have followed the Westminster line if it was not for the Liberal

Democrat coalition partner also insisting on the issue (Laffin, et al, 2007: 99). In this case, partial incongruence offered a license to diverge more from England in policy areas that Labour considers pivotal to its statewide party ideology and image.

These examples of policy divergence could have damaged the UK Labour Party by creating the impression that Scottish Labour cares more about welfare than 'New Labour' in England. This supports the argument that intergovernmental conflicts are most likely to appear in politically salient issues with distributive or redistributive consequences. This may be especially the case in the context of Labour-led governments given the party's ideological emphasis on social redistribution and social citizenship rights. However, the Scottish Executive was *not* forced to reverse its policy-stance on either of these issues, and amicable agreements were found behind closed doors. In fact, the single issue to have provoked major debate within the Scottish Policy Forum during this period referred to a party-union dispute on Private Finance Initiatives (i.e. the more widespread use of private money in funding public infrastructure works), but the vertical dimension of this issue was indirect at best insofar as the Scottish Executive adopted a policy which was already common practice in England (Laffin, et al. 2007: 98).

### *Wales*

By and large, UK-Welsh intergovernmental relations were characterized by a similar co-operative attitude as described for UK-Scottish relations above. However, despite the more apparent need for intergovernmental co-operation resulting from the specific nature of the Welsh devolution 'settlement', unilateralism and conflict have been more common than in Scotland. In contrast to the Scottish case, conflicts centred as much on the process of intergovernmental co-operation than on the substance, i.e. in seeking to obtain better access to Whitehall and Westminster in order to claim maximum Welsh ownership of delegated legislation and executive competencies.

The small size of Wales, its limited powers and the presence of 'devo-sceptics' among the ranks of Welsh Labour MPs produced a strong imbalance in intergovernmental relations between the Welsh Assembly Government and the UK government. In its 2002 report on Inter-Institutional Relations in the UK, the House of Lords Select Committee on the Constitution queried the quality and frequency of co-operation between the UK Parliament and government (through its Welsh Secretary) and the Welsh Assembly Government, notwithstanding the highly co-operative framework of Welsh devolution:

liaison [over legislation] is unsystematic, almost *random*, highly opaque and hard for lay people, Westminster legislators or Assembly members to follow. It also affords only limited opportunities for the National Assembly's views to be heard in connection with bills affecting the Assembly. Moreover, such opportunities as exist to influence legislation are exercised behind the scenes and are only available to Ministers and the Welsh Assembly Government. It appears to us that Wales figures in such arrangements largely as an afterthought appended to a process driven by a UK government's concerns and priorities, rather than those of Wales in general or the National Assembly (House of Lords, 2002: 36, our italics)

This supposedly 'co-operative' relationship thus provides more scope for conflict if one of the key partners reneges on its consultative and co-operative 'obligations'. The Lords report insinuated that the UK-Welsh relationship was highly imbalanced since parliamentary sovereignty and the lack of primary legislative

powers reduced the capacity of Welsh assembly members or the Welsh Assembly government to fight against UK unilateralism.

However, this imbalanced relationship may have contributed to the more assertive attitude evident among Welsh Labour AMs compared with their counterparts in the Scottish parliamentary Labour group. Since Welsh devolution was approved with a wafer-thin majority in the 1997 referendum, the Assembly needed to prove it could make a difference to public life. Furthermore, relationships between Labour Assembly Members and the UK Labour party more broadly were frosty due to the central party's imposition of Alun Michael as the Assembly party leader in 1999, against the wishes of a majority of Labour Assembly members (who favoured Rhodri Morgan). This added to the perception of Wales' interests being neglected by the UK government and parliament. However, Labour (and other) Assembly members successfully rebelled against and ended Alun Michael's tenure as First Minister, formally on the basis of his failure to secure a pledge from the UK Treasury to match funding for the west of Wales and Valleys region which secured 'objective 1' status under the EU Structural Fund programme.<sup>5</sup> The election of Rhodri Morgan as his replacement paved the way for a more assertive and occasionally more confrontational approach with the UK government. Morgan's popularity among Welsh party members, grassroots and the electorate gave him the political legitimacy and strength to force a profound review of the Welsh devolution settlement under the Government of Wales Act in 2006.

Equally important, Morgan pursued a more distinctive Welsh policy agenda and campaigned for more clarity in the delineation of responsibilities between Westminster and the National Assembly for Wales. Morgan advocated a 'neo-nationalist' (Keating 2009) agenda, which at least heightened the visibility of the National Assembly, heightening its stature beyond the limits of its constitutional competences. For example, Assembly secretaries were renamed 'ministers' in the year 2000 and, two years later, the Assembly Ministers referred to themselves collectively as the Welsh Assembly Government (WAG), a move that was not made by the Scottish Executive until the SNP seized power in 2007. Within the limits of the Welsh devolved framework, the WAG also pursued policies that meant a clear departure from New Labour's agenda for the UK as a whole. As one BBC journalist put it "...the way services are provided in Wales and England has diverged increasingly over the past decade although, ironically, that's more because of changes in England than anything that has happened in Wales (BBC, 17 September 2007). In a now (in)famous speech to the National Institute for Public Policy Research at the University of Wales, Swansea, Morgan spoke of his desire of establishing 'clear red water' between the policies of his administration and those of New Labour in Westminster (Morgan, 11 December 2002). For him, Labour policy meant that equality of outcomes should trump over equality of opportunities. During his tenure as First Minister (Morgan only retired in 2009), free prescription charges were introduced, as well as free breakfasts in primary schools and reduced bus travel for 16 to 18 year olds. Like Scotland, Wales opposed the introduction of foundation hospitals, because "the experiment will end, not with patients choosing hospitals, but with hospitals choosing patients" (Morgan, cited in BBC 11 December 2002). For the same reason, the Assembly government rejected the end of comprehensive schooling,

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<sup>5</sup> Without this promise, Wales stood to lose £1.2 billion in EU Objective 1 structural funding between 2000 and 2006 (Devolution Monitoring Report –DMR- Wales, February 2000), unless the required matching amount was paid from savings in the Welsh block grant.

introduced free entry to museums and galleries (a move that was later copied by the UK government for England), re-opened some disused railways and kept university tuition fees below the rates for students in England. The UK parliament, due to its control over primary legislation and its constitutional supremacy, could have restricted the leeway of the Welsh Assembly government to pursue these "Old Labour" policies but in the end it did not. This illustrates how, with a strong local support base and intra-governmental strength, regional political leaders can work around the 'shadow of hierarchy' and carve out policy space for themselves.

## **5. Intergovernmental Relations under Party Incongruence (2007-)**

### *(i) Institutionalization of IGR Processes*

#### *Scotland*

In the conceptual framework above, we envisaged two possible scenarios unfolding as a result of full party incongruence. The first foresaw little change in the process and degree of institutionalisation of intergovernmental relations, and less incentive for governments of different political colours to engage with each other given the likelihood of increased divergence in their policy and strategic objectives. The second, by contrast, predicted more intense and formalised intergovernmental interaction in light of the absence of intra-party structures through which policy coordination could be channeled. Applied to the UK-Scottish case, we might expect the first scenario to be the more likely given the non-federal nature of the system, the dual nature of competence allocation, and lack of incentive for intergovernmental coordination. The UK government remains a one party majoritarian government which continues to operate in what is a devolved but not a federal context. Binding itself in formalized intergovernmental relations with governments, especially when they involve parties with whom the UK party of government directly competes, seems likely to lead to concessions which work against its interests. We might expect, too, that intergovernmental coordination would work against the interests of the SNP government. Its minority status potentially weakens its negotiating hand, while the structure underpinning the intergovernmental machinery remains biased in favour of the UK government.

However, one of the intriguing developments following the 2007 elections was the initial pressure from the Scottish Government to resurrect the Joint Ministerial Committee and to place IGR on a more formal footing. As discussed above, the JMC had not met in plenary format since 2002. In its functional format, only the JMC (Europe) met regularly – the other functional JMCs had become largely redundant. Scotland's First Minister, Alex Salmond, pressed for the re-establishment of the JMC – notably in an unanswered letter to the Prime Minister in August 2007 – and these calls were echoed by his ministerial colleagues. For example, in his evidence to the Justice Committee, the Scottish Minister for Parliamentary Business, Bruce Crawford, bemoaned the failure of the JMC to live up to the expectations created at its inception:

The JMC has not met since 2002. There was an expectation from the Memorandum of Understanding that it would meet on a yearly basis. I certainly think it could have met following the terrorist attack on Glasgow airport. It could have usefully met to have discussed financial and Treasury matters. I think it could have usefully met to discuss issues around the foot and mouth disease outbreak that happened and some of the

conflicts that existed between the UK and Scottish Government at that time. I think there is a real role for the JMC... (HCJC, 26 February 2008).

Likewise, in her evidence before the committee, the Deputy First Minister and Cabinet Secretary for Health, Nicola Sturgeon, described the disuse of the JMC as ‘a huge missed opportunity’, insisting that ‘the working relations between the Scottish Government and the Government at Westminster would be strengthened on a day-to-day basis if that machinery worked better than it does’ (HCJC, 26 February 2008).

In response to such pressure, the then Secretary of State for Wales, Paul Murphy, was given the additional responsibility of overseeing the JMC and the British-Irish Council, and developed proposals to establish a JMC (domestic) to replace the defunct functional format JMCs and meet alongside the JMC (Europe) and the plenary sessions. JMC plenary sessions were held in June 2008, and more recently in September 2009. The first of these was instructive in preparing the ground for a UK-wide agreement on marine planning and also debated some proposed changes to the intergovernmental machinery itself, setting the contours of the new JMC (Domestic). A revision of the Memorandum of Understanding was also proposed. (Cabinet Office, Statement from the Joint Ministerial Committee).<sup>6</sup> The JMC (Domestic) has apparently met three times – less frequently than initially envisaged – since the option was first discussed in the plenary session of 2008. Most of these meetings have focused on tackling the economic crisis. Furthermore, in a symbolic gesture to Scotland, the UK cabinet convened in Glasgow in April 2009 – its first meeting in Scotland in 90 years – to focus on its economic strategy for tackling the global financial crisis. Although Scottish First Minister Alex Salmond would have wanted this meeting to be turned into a joint UK-Scottish cabinet meeting, he was only invited to dinner with Gordon Brown on the evening before the meeting. Also, it appears that, notwithstanding statements to the contrary, thus far no formal amendments have been made to the Memorandum of Understanding.

The enthusiasm of the SNP administration for revamping the JMC and multilateral coordination more generally has somewhat declined since it was elected to government. More important has been the cultivation of bilateral intergovernmental relations, i.e. to work with – rather than against – the UK government in the broader interests of Scotland. Indeed, evidence presented by SNP ministers and the Scottish Government’s Permanent Secretary to the Justice Committee Inquiry on Devolution underlines a desire to strengthen inter-ministerial bilateral relations, particularly with the UK Government, clearly seeing the role of the Scotland Office as an interlocutor as redundant. The number of legislative consent motions approved since 2007 provides some evidence for continued intergovernmental coordination. Twenty-five such motions have been proposed by the Scottish Government and approved by the Scottish Parliament since 2007, scarcely below the rate recorded during the Labour-Liberal Democrat coalition government.<sup>7</sup>

Furthermore, more resources and more strategic importance has been attached to cultivating this bilateral intergovernmental relationship. On the one hand, there has been a substantial overhaul in the civil service organization within the Scottish Executive, moving away from the departmental model inherited from Westminster towards a structure that mirrors and is intended to serve the collective and cross-departmental strategic aims of the new government. At the highest level, issues of

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<sup>6</sup> <http://www.cabinetoffice.gov.uk/newsroom/statements/090916-jmc.aspx>

<sup>7</sup> (<http://www.scotland.gov.uk/Topics/Government/Sewel/SessionThree>)

intergovernmental coordination are now taken care of by a Scottish-UK Liaison team, which is attached directly to the administration of the Scottish First Minister. From the UK side, the Secretary of State for Scotland has become a more prominent function again, since he no longer divides his workload with another ministerial portfolio. Jim Murphy, the current postholder, can therefore devote all of his workload to ensuring the UK cabinet (of which he remains a member) takes Scottish interests seriously, monitoring the Scottish government, and counteracting the SNP government's claim that it alone stands up for Scotland. This more politicised role of the Secretary of State for Scotland is a feature and consequence of party incongruence and limits the extent to which the Scotland Office can perform a liaison function between the two governments or facilitate intergovernmental co-ordination.

### *Wales*

Unlike the SNP government in Scotland, the Labour-Plaid coalition in Wales was not intent on changing the multilateral architecture of intergovernmental relations. The "One Wales" coalition agreement does not contain any guidance on how its relations with other devolved governments or the UK government should be shaped. It merely states that 'matters reserved to the UK parliament, other than those mentioned in this programme are outside the scope of this agreement. Whenever necessary, the parties will decide, through the Cabinet Committee, how to deal with such matters on a case-by-case basis' (One Wales, 2007: 42). The Agreement does, however, commit both parties to use to the full the new powers conferred upon the Assembly following the GWA 2006, and to support a referendum seeking full legislative powers for the Assembly. To that end, the coalition partners agreed to establish an 'All Wales Convention'. Its report, lodged in November 2009, contains useful insights into the process of intergovernmental exchange that is required to make Welsh devolution work (AWCR 2009).

The 2007 National Assembly for Wales elections were historic for two reasons. Apart from the formation of a Labour-Plaid coalition, they conferred more powers to the National Assembly for Wales, following the entry into force of the Government of Wales Act, 2006. This increased the scope for divergence between the UK and Welsh government in devolved policy. Yet, increased Assembly powers may also have affected the UK's approach to coordinating with the Welsh authorities on legislation. Since the increase in Assembly powers coincides with the arrival of Plaid Cymru in the Welsh Assembly Government, it is difficult to establish which has most influenced intergovernmental relations.

The GWA 2006 formally and legally separated the National Assembly for Wales and the Welsh Assembly Government. The National Assembly thus lost its executive functions but it acquired the right to pass primarily laws or 'Measures'. Unlike the Scottish Parliament, which acquired such powers directly, the National Assembly cannot legislate without first gaining the consent of Westminster and Whitehall. The GWA lists two ways by which the Assembly can acquire this right. The first 'bottom up route' requires the initiation by the Welsh National Assembly or Welsh Assembly Government through a Legislative Competence Order (LCO). This takes the form of a request to delegate power from Westminster to the Assembly, enabling the latter to make 'measures' in 'matters' falling within 20 policy fields, including agriculture, culture, economic development, education, environment, health and health services, transport, housing, welfare assistance programmes, tourism, town and country planning and the Welsh language. The National Assembly for Wales can only request to receive competence to legislate in 'part' of a field (also referred to as a

'matter'), it cannot request to devolve legislative competence in an entire field (say education). Proposals to legislate in a matter have to go through a 'purpose and effect test' to make sure the proposed matter for legislative competence falls within any of the fields designated in the GWA. The second or 'top down route' for acquiring legislative competencies is through an Act of (the Westminster) Parliament, containing clauses that delegate legislative powers to the National Assembly for Wales and by doing so, insert a particular matter into the list of policy fields. Unlike the 'bottom up route', the process for acquiring legislative powers through the second 'top down' route is entirely inter-parliamentary, not inter-governmental.

For either of these mechanisms, the devolved institutions in Wales remain highly dependent on the consent of the UK government and on intergovernmental goodwill and cooperation more generally. Once the Assembly has approved a request for an LCO, it is passed to the secretary of state for Wales, sent to both houses of Parliament, and finally approved by 'Her Majesty in Council' (UK government). There is mixed evidence about the degree to which Whitehall and Westminster have co-operated in extending Welsh Legislative Powers. In recent evidence to the Justice Committee, the presiding Officer of the National Assembly for Wales, Lord Elis-Thomas, assessed co-operation with the UK government rather favourably. Commenting on his relationship with the Secretary of State for Wales, Elis-Thomas stated that:

'the determination of the current Secretary of State (for Wales) to make the system work is very clear. The recent strengthening and restructuring of his office is a sign of that, and his constant endeavour to communicate with Welsh ministers, and obviously with the First Minister but with myself, and the willingness shown to officials here in the National Assembly and in the Assembly Commission to speak with officials in the Wales Office regularly and the willingness to smooth the path of progress especially in relation to Assembly proposed orders being requested by individual members I think speaks for itself.' (HC, JC, Ev 110)

As is true for Scotland, since 2008, Paul Murphy and following his resignation Peter Hain (who resumed the role of secretary of state for Wales in June 2009) have been full time secretaries of state for Wales. A junior minister (parliamentary secretary, and former Labour Whip) is attached to the post, giving additional political weight to influencing the processing of Welsh legislation (LCO requests or UK framework bills) through the Commons.

However, it is questionable whether these efforts have been of much help in speeding up the process or raising awareness of Welsh issues in the Commons more generally. It has been said that there is a Welsh equivalent to the Scottish Legislative Consent (or Sewel) motions in that Westminster will not legislate in areas where the Assembly has legislative competence (DMR, 2009: 27). However, the problem is not whether Westminster will legislate in matters which it previously devolved, but rather whether it is willing to devolve legislative powers all. Thus far only eight Welsh government initiated LCOs have been approved and received royal assent, the last of which was introduced in February 2009, illustrating the protracted process between their initiation by the Assembly and their approval by the UK government. Only in February 2010, the UK government adopted the first National Assembly private member LCO. It was initiated as early as February 2008. Thus far, only 9 Assembly measures have been adopted (either triggered on the basis of the bottom up LCO or

top down ‘Welsh clause in Westminster framework bill’ initiated process; (NAW web-page, subordinate legislation ‘scoreboard’, consulted 8 March 2010).<sup>8</sup>

The delay in approving LCOs cannot be attributed to partial party political incongruence in the intergovernmental relationship since 2007. Indeed, Wyn Jones and Royles attributed these delays in part to an ongoing power-struggle within the Labour Party between Labour AMs and Welsh Labour MPs over who has the right to speak for Wales (Wyn Jones and Royles 2009). In evidence to the All Wales Convention, the cumbersome process of having LCOs approved was also criticized: a proposed order must first be initiated by the WAG or an AM, a draft proposed order is then agreed between the UK government (secretary of state for Wales, but possibly also other Whitehall departments where the proposed LCO covers a broader policy spectrum) and Welsh government; pre-legislative scrutiny then takes place in the relevant Assembly committee, the Welsh Affairs Committee in the Commons and the House of Lords Constitution Committee (though the Welsh secretary has a veto-right in this matter and could stop a draft LCO from being considered by the Commons); the UK and Welsh governments then respond to the scrutiny reports and agree on the text of a draft LCO, which is then submitted for approval to the National Assembly, the Commons and the Lords, and finally sent on to Queen (in Council) for formal approval (All Wales Convention Report -- AWCR: 29). Some interests groups considered the process as ‘Byzantine’ (AWCR: 30) or perceived it as inhibiting participation. LCOs were often perceived as so ‘tightly defined they are almost Measures. You can probably only make one or two pieces of legislation under them, which means we could have many thousands of LCOs and never be in a situation that would add up to a coherent set of powers’ (AWCR: 32). The Deputy First Minister (Plaid Cymru leader, Ieuan Wyn Jones) also complained that Westminster was often seeking to answer the question as to whether the policy direction for the proposed LCO was the right one (i.e. one it agreed with), rather than answering whether it was right (i.e. within the scope of its competence) for the Assembly to be given legislative powers in that area to begin with (AWCR: 33).

On the other hand, Wales has acquired more legislative powers through Welsh provisions in UK parliamentary bills, the top down route to legislative competence as described above. Yet, this process in turn has been criticized for preventing the Welsh Assembly (Government) from scrutinizing the draft legislation at hand (Adam Price, MP in AWCR: 35). Westminster MPs are also said to be less familiar with how bills affect Wales and how provisions will be implemented by the Welsh Assembly Government, potentially leading to a shortfall in provisions for Wales, a complaint issued by an RSPB (Royal Society for the Protection of Birds) Cymru representative in relation to the UK’s Marine and Coastal Access Bill (AWCR: 35).

Notwithstanding these shortcomings, it is clear that the Welsh Assembly government has been willing to work the system, setting its hopes on a successful referendum in 2011 after which Wales would acquire full legislative competence in all 20 fields listed in the GWA (2006) without having to follow the protracted and incremental route through Westminster for obtaining legislative competence first.

## ***(ii) The Effect of Incongruence on the Nature and Outcomes of IGR***

### *Scotland*

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<sup>8</sup> <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-sub.htm>

Party political incongruence appears to have produced greater tensions in the relationship between the Scottish and UK Governments. There has been considerable media attention given to periodic intergovernmental conflicts, and the Scottish Government has clearly signaled its intention to raise issues – publicly where necessary – where it feels that Scottish interests are being neglected. An early indication of this was in response to the UK Government’s ‘memorandum of understanding’ with Libya concerning the transfer of Libyan prisoners, currently serving sentences in the UK, to serve out the remainder of their sentences in their home country. This was perceived in Scotland to involve the transfer of the man convicted of the Lockerbie bombing, Abdelbaset Ali Mohmed al Megrahi, and was reached without prior consultation with, or agreement of, the Scottish Government (and arguably in contravention of the Memorandum of Understanding and the Concordat on International Relations). The Scottish Government voiced its protests vociferously and publicly, much to the embarrassment of the UK Government (Trench, 2007b).

Intergovernmental tension is more evident in some policy areas than in others, reflecting the importance of policy salience as an intervening influence. Financial issues are often a focus for tension in IGR. To some extent, this is contained in the UK 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 UK Treasury, 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’ concerning the means by which the Scottish government might access additional resources from the Treasury (Trench, 2008: 81). One example is a debate over *end year flexibility*, with the Scottish government seeking to access the substantial reserve of money (reputedly in the region of £900m) left after previous Scottish Executive administrations under-spent their budget allocation. According to Trench, the Treasury agreed to release funds but on the condition that they be used to support capital investment (*ibid*: 82), thus introducing an element of conditionality to the fiscal transfer. Other disputes with the Treasury have thus far produced stalemate, e.g. over access to the funds derived from the Fossil Fuel Levy. This Levy had by 31 March 2009 accumulated £153.2 million (HC Deb, 8 June 2009, c721W). By statute, these funds can only be accessed by Scottish ministers and can only be spent on renewable energy investment. However, the Treasury has refused to exempt the funds from Departmental Expenditure Limits, so any money accessed by the Scottish Government through these means would result in a corresponding deduction from the Scottish block grant. The Scottish government’s efforts to secure these resources without confronting a fiscal penalty were supported by the Scottish Parliament committee on Economy, Energy and Tourism (Scottish Parliament, 2009), but intergovernmental negotiations have not as yet led to an acceptable compromise.

However, less politically salient policy arenas have been marked by a continuation of policy co-operation and co-ordination. In the area of climate change, for example, intergovernmental relations have been largely co-operative, reflecting the shared commitment across parties and governments to reduce greenhouse gas emissions and meet Kyoto and EU targets. For example, the UK Climate Change bill involved close liaison between governments at different levels, and a specific concordat endorsed by the Secretary of State and key ministers within the devolved administrations accompanied the Act itself. This concordat set out an agreed framework for administrative co-operation to ensure implementation of the regulatory

framework established by the Act and to 'promote close and harmonious working relationships' and 'where possible agreement in delivering a coherent cost-effective climate change policy framework' (HM Government, *et al.*, 2008: 3). It established a Liaison Group composed of a body of senior officials from each of the four governments to facilitate high-level coordination, communication and consultation, and set out the roles and responsibilities each party has towards the Committee on Climate Change. The UK government and the devolved administrations have also worked closely to develop a new policy lever, the Carbon Reduction Commitment which, from April 2010, will regulate emissions from large, non-energy-intensive commercial and public sector organisations (e.g. supermarkets, hotel chains, banks, public bodies, etc) which are not already covered by the EU Emissions Trading Scheme.

Autonomy constraints have also become apparent as a result of the continuing policy interdependencies between the Scottish and UK Governments, most notably between social policy and social security. For example, the SNP government's proposals to replace council tax with a local income tax have generated heated exchanges with the UK Treasury. This debate echoes the earlier (and ongoing) issues arising from the Scottish Executive's free personal care policy and the refusal of the Treasury to transfer the savings in Attendance Allowance made by the Department of Works and Pensions, although the funds involved in council tax benefit are substantially higher. The debate centres on whether the Scottish Government is entitled to receive a fiscal transfer equivalent to the money which would have been spent on council tax benefits to claimants in Scotland to help fund the proposed local income tax programme – firmly rejected by the Treasury thus far. Although it should be acknowledged this is only one problem associated with the new government's plans for local taxation, the dependence on the will of the Treasury further exposes the limitations of Scottish political autonomy in a context of policy inter-dependence.

Such policy interdependencies and the constraints on Scottish political autonomy were clearly evident within the context of party congruence too. Yet, they are more likely to provoke intergovernmental tension in the context of party political incongruence as the SNP government pushes at the boundaries of the devolution settlement. In so doing, it is seeking 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. In this respect, it is impossible to distinguish the effect on the nature and outcome of intergovernmental relations of party incongruence, *per se*, from the competing nationalist objectives that incongruence has entailed.

### *Wales*

Notwithstanding the arrival of Plaid Cymru into government, there has been little change in the nature or outcomes of intergovernmental relations in Wales. In fact, conflict is mainly confined to disputes with the UK government on the procedural issues discussed above, focusing on a need in particular to speed up the process of acquiring more legislative competence. Intergovernmental disputes rarely relate to policy issues. Where they arise, they reveal at least as much disagreement between Labour Assembly members and MPs than between the Labour Government and the partially incongruent Welsh Assembly Government.

The presence of a 42 page long Coalition agreement, as well as the commitment of both parties to use the powers under the Government of Wales Act to the full have minimized tensions between Plaid and Labour at the level of the WAG

so far. However, occasional tensions have emerged between the WAG and the secretary of state for Wales, as well as between Labour and Plaid Cymru MPs. Hain and Murphy, the two secretaries of state for Wales since 2007, both opposed a Labour-Plaid coalition, and among the devo-sceptic Labour MPs (a majority of Welsh Labour MPs), there is a desire to limit the growth in the Assembly's powers, in part as a proxy for opposing the coalition with Plaid (DMR, 2008: 47). This was reflected, for instance, when to the dismay of Labour AMs, some Labour MPs advocated the need to see evidence as to *why* an additional legislative competence is necessary to address a Welsh-specific need. Such a "necessity test" would be added to what is already a thorough scrutiny by the Wales Office of LCOs based on three criteria: does the scope of the draft LCO fall within the area of legislative competence specified in the GWA; is the LCO for a justifiable purpose (that is to say, is the NAW intent on using it imminently or its purpose for the sake of adding more competence); and finally does the wording of the LCO meet the purpose for which it was intended (DMR, January 2008: 31, see also Devolution Guidance Number 16, as amended in 2008). The braking tactics of the Commons Welsh Affairs committee led the Presiding Officer of the Assembly to write a formal complaint to the secretary of state for Wales, accusing the committee of anti-devolution sentiment, after it requested an LCO on affordable housing to be redrafted so as to narrow its scope. In turn, Whitehall was seen as delaying the Welsh Language LCO by eighteen months for the same reason.

Aside from the issue of what powers should Wales be allowed to exercise, open policy disputes (as they appeared for instance between Morgan and Blair on the direction of Labour Policy) have been scarce. For example, Plaid Cymru complained about the projected money to be set aside for Wales, following the Comprehensive Spending Review of late 2007. Although the Assembly government's spending was set to increase by with £2 billion by 2010, Plaid MPs called it the worst financial settlement since devolution, and feared that they would not be able to fulfil their 228 (!) policy coalition pledges as a result. Beyond the occasional disputes on procedure and money, the inclusion of Plaid Cymru as the junior partner in the Welsh Assembly Government has not greatly affected the character of intergovernmental relations. According to Wyn Jones and Royles, Plaid Cymru has little interest in provoking conflict with London, 'not only because they are intent on using their time in government to kill off any doubts about the party's competence, but also because the prospect of another devolution referendum – as flagged in the coalition agreement – puts a premium on keeping the pro-primary powers camp relatively united' (Wyn Jones and Royles, 2009: 19).

The prospect of the referendum may thus have contained inter-party and intergovernmental tensions. Yet, the uncertainty over the timing of the referendum may put a strain on co-ordination within the Welsh Assembly Government and between it and the UK Government. The One Wales accord suggested holding the referendum no later than May 2011, and included a pledge to a Yes vote for full legislative powers from both parties. The coalition partners recently agreed that holding the referendum concurrently with the Assembly elections in May 2011 would not be wise and settled for a referendum in the Autumn of 2010 instead. However, to make an early referendum possible, the process would have to be kick-started in February 2010. The GWA stipulates that the Assembly needs the support of 40/60 AMs in favour of a motion asking the Secretary of State for Wales to call a referendum. It is estimated (especially due to the interfering general election in May 2010) that another nine months are required thereafter before the referendum could be held. The indecisiveness of the Labour Party (which the press attributed to differences

of opinion between Labour MPs, Whitehall and Labour AMs) destabilized the coalition, but in the end the motion was put and unanimously approved (Western Mail, 27 January 2010).

The real test for Welsh devolution and of the robustness of its intergovernmental machinery may well come only after the forthcoming UK general election. If the Conservatives win, will the secretary of state for Wales be willing to call a referendum? Welsh Conservatives themselves have tried to reach a uniform position on the issue: while Conservative AMs (and their leader) supported the motion in favour of a referendum, Conservatives MPs do not necessarily share this position. Less than two years ago, David Cameron asked Lord Roberts to try to agree a position on the issue. After wide consultations, Lord Roberts proposed that a referendum should only be called after a 'root and branch examination of the system of governance in Wales and its effectiveness as it has developed since 1997, taking full account of the relationship with other parts of the UK'<sup>9</sup> In light of the recent NAW vote, adopting the same attitude would surely put the UK government on a collision course with its Welsh counterparts and, indeed, potentially its own Welsh AMs. Yet, as Hazell argues, there may be grounds for optimism, due to the predicted seat gains for Welsh Conservatives in Westminster. Some estimates predict that Conservatives could gain up to 18 seats (up from 3 now). Part of this support may well come from voters who are highly critical of the WAG policy record (especially in relation to health, economic policy and education), yet supportive of more legislative powers in principle. To block further devolution could alienate these voters and drive them to other parties instead (Constitution Unit, 2010: 34).

## 6. Conclusions

What then, can we conclude, about the effect of party congruence and incongruence on the process and outcome of intergovernmental relations in the UK? In a sense, our conclusions can only be speculative. Given the limited examples within the UK of degrees and forms of incongruence, we can't fully distinguish between the effects of incongruence – partial or otherwise – and incongruence with a nationalist party at the sub-state level. Three years of incongruence – or partial incongruence – is also a relatively short time frame from which to draw definitive conclusions. Nonetheless, we can make preliminary observations with regard to both the processes of intergovernmental relations and the nature and outcomes of those relations. These are summarised in Figure 2 below.

First, there appears to have been greater continuity than change in the limited degree of institutionalisation 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. This may in part be a result of pressure from numerous committees and specialist for a more robust system of intergovernmental relations, 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. Some of the intervening variables may have modified the effect of party incongruence on

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<sup>9</sup>[http://www.conservatives.com/News/News\\_stories/2008/11/~~/media/Files/Downloadable%20Files/RobertsReviewSummary.ashx](http://www.conservatives.com/News/News_stories/2008/11/~~/media/Files/Downloadable%20Files/RobertsReviewSummary.ashx)

intergovernmental processes. Their hierarchical structure, the non-binding nature of their agreements and the lack of a veto for the devolved administrations weakens the incentive for their participation. The asymmetrical system, meanwhile, encourages both the UK government and the devolved administrations to focus on bilateral rather than multi-lateral 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 co-ordination 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 intergovernmental relations which, since 2007, have been conducted within a context of total party incongruence. This has been especially evident over issues of high political salience, for example, issues of finance, home affairs and external relations deemed to affect Scotland. However, these tensions have not 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, for example (REFS). Once again, we can point to an effect played by our intermediary variables. Although the Judicial Committee of the Privy Council (and now the Supreme Court) has been given a role in interpreting matters of vires, the political culture in the UK does not normally lead governments to resort to the courts. Similarly, the JMC has not (yet) been invited to consider matters of political dispute between administrations – a role accorded to it at its inception. In part, this reflects a reluctance on the part of either the UK or the devolved administrations to test the settlement and risk establishing a precedent unfavourable to their interests. For the devolved administrations – who would seem most likely to refer an issue for dispute resolution (since the devolution legislation did not constitutionally curtail the UK government's scope for decision-making), the JMC's hierarchical structure makes such a referral an unattractive option.

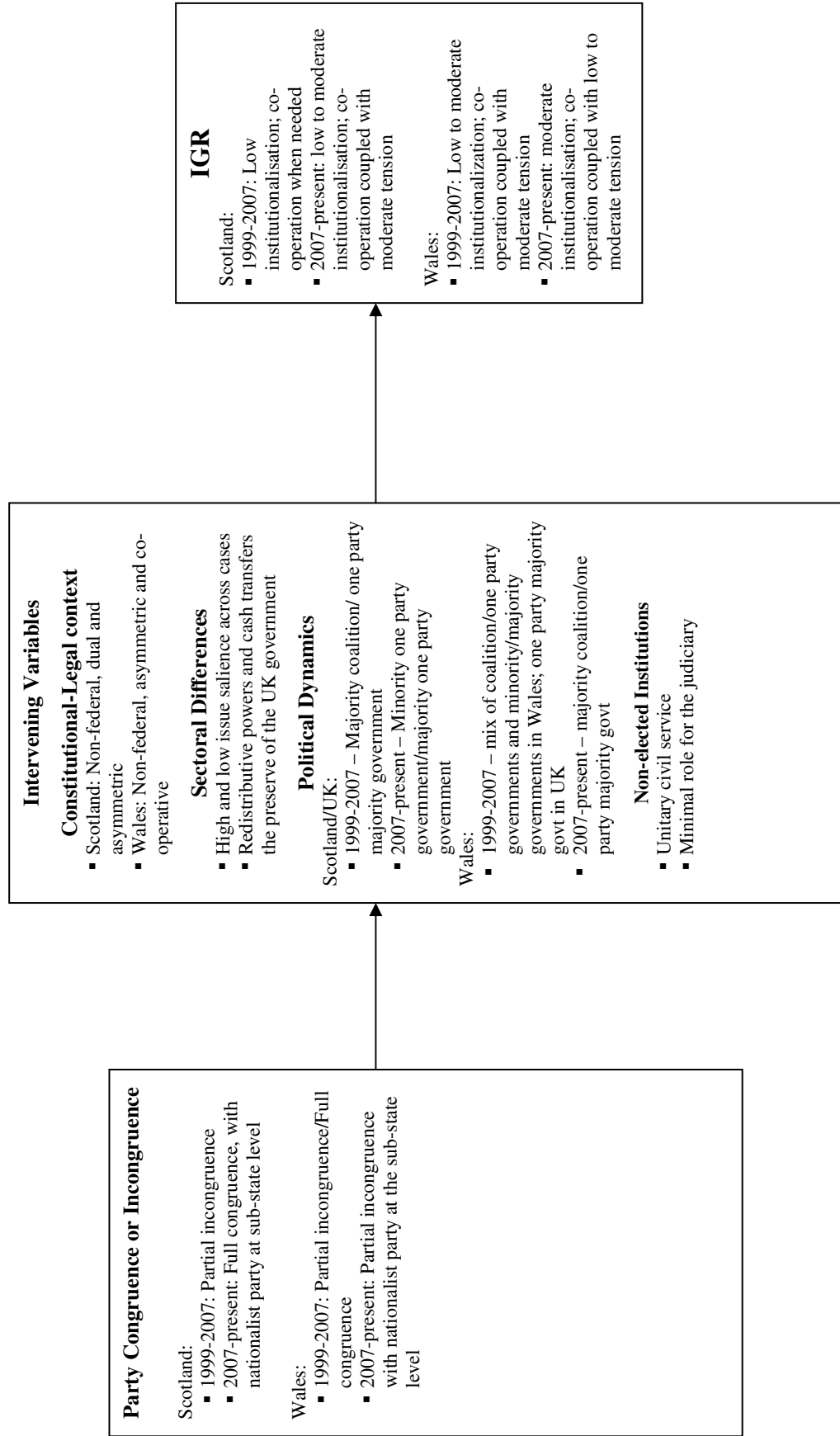
We should be careful not to exaggerate the extent of conflict, however. In Wales, there is arguably less tension in the intergovernmental relation since 2007 than was evident beforehand. As noted above, this may reflect Plaid Cymru's desire not to jeopardise the promised referendum on primary legislative powers. It also may 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 may have diminished.

While the competing nationalist objectives of the Scottish and UK governments provides fertile ground for conflictual intergovernmental relations, even here the media focus on constitutional 'turf wars' between the two governments masks a good deal of co-operation in policy areas where the policy objectives are shared. However, the need for intergovernmental co-ordination is less evident in Scotland than in Wales, given the latter's continued 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. Furthermore, the SNP government's minority status has necessitated greater inter-party policy co-ordination – with more stalemate in the absence of such co-operation – in relations between the

executive and the parliament within Scotland than has been evident in Scottish-UK intergovernmental relations.

The prospect of a change of government at the forthcoming UK General Election could, of course, change these intergovernmental dynamics again. How it would do so remains to be seen. What seems certain, though, is that the likelihood of Conservative success in England will not be replicated in Scotland, though they party looks set to makes some inroads in Wales. A Conservative government at the centre, though, would produce total incongruence in the intergovernmental relationships across the UK, potentially exacerbating the effect of incongruence on the processes and nature of IGR.

Figure 2: Party (In)congruence and the Dynamics of Intergovernmental Relations in the UK



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