

Intergovernmental Relations in Scotland: what was the SNP effect?

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Abstract

In Scotland, the formation of a minority government in 2007 by the Scottish National Party (SNP) provided the potential for profound changes in intergovernmental relations. This followed eight years of a Scottish Labour-led coalition government characterised by a low key and informal relationship with the UK Labour government. From 1999-2007, discussions were conducted informally and almost entirely through political parties and executives (ministers and civil servants). Although formal mechanisms for negotiation and dispute resolution existed - including the courts, concordats and Joint Ministerial Committees - they were used rarely. The Scottish Executive also played a minimal role in EU policy making. Yet, an 'explosive' new era of relations between the Scottish and UK governments did not arrive in tandem with the new era of party incongruence. The aim of this article is to explore these issues by asking two main questions: why were formal mechanisms used so rarely from 1999-2007, and what factors have produced muted rather than problematic IGR from 2007-11?¹

Keywords: intergovernmental relations – policy communities – asymmetry – minority government

In Scotland, the formation of a Scottish National Party (SNP) government in 2007 provided the potential for profound changes in IGR. The first eight years of Scottish devolution (1999-2007) were marked by high party congruence. The Labour party formed a majority UK government from 1997-2010, while Scottish Labour was the main party within a coalition government that spanned two four-year terms. Party congruence appeared to influence strongly the nature of IGR by effectively institutionalising an informal system of consultation and negotiation through party and ministerial channels (supplemented by the UK civil service network). In 2007, the coalition was replaced by a minority government led by a party committed not only to challenging that system of IGR, but also the very nature of the constitutional settlement. Then, in 2010, the UK Labour government was replaced by a Conservative/Liberal Democrat coalition – suggesting that the initially high levels of party congruence in the first eight years will be replaced by at least seven years of low congruence. Yet, the initial change of party in 2007 did not have a dramatic effect on IGR, while the more general loss of high party congruence is unlikely to lead to radically different relationships between the UK and Scottish governments.

This article explains why IGR remains notably stable over time by highlighting the factors that encourage a particular intergovernmental style in Scotland within the UK. A major aim of this edited volume is to explore an 'overall logic' underpinning IGR in the UK. To this end, the article draws on the policy communities literature to identify a 'logic

¹ The definitive version is available at wileyonlinelibrary.com.

of informality' between governments that resembles the 'logic of consultation' (Jordan and Maloney, 1997) between governments and interest groups. The first key argument in this literature is that governments do not try to impose policy decisions regularly even if they appear to be in a position to do so. It provides a useful corrective to studies which label the UK system as 'majoritarian' and associate it, in a very misleading way, with a concentration of power in the centre and top-down policy making without recourse to meaningful consultation (Cairney, 2011: 208). Rather, top-down policy making is expensive and, as such, used sparingly – even by governments that are clearly more powerful than other actors. The second is that successful 'pressure participants' (such as interest groups – Jordan et al, 2004) generally pursue an insider strategy towards government - presenting fairly reasonable demands, managing their own expectations (or recognising that the balance of power is in favour of government), and criticising government policy infrequently – to build up their reputation and maximise their influence within policy networks. Combined, we find that most policy is made in a relatively straightforward way by governments in consultation with groups and beyond the public spotlight – a process that receives far less attention than the small number of highly visible issues involving government imposition and group opposition (2011: 211).

The same logic applies to IGR in two main ways. First, top-down policy making is often politically expensive and generally unnecessary. Consequently, the UK government tends not to impose policies on devolved governments. Second, Scottish governments generally accept the reality of an asymmetry of power between UK and Scottish governments, and recognise the benefits of pursuing the same kinds of insider strategies associated with groups (see also Midwinter et al, 1991, for a description of the former Scottish Office as one of the UK's most significant pressure groups). It would be reasonable to expect this relationship to weaken during periods of low party congruence. However, the 'SNP effect' (from 2007-11) has largely been undermined by the constraints of minority government and the tendency for opposition parties to reject policies in the Scottish Parliament that would have tested current IGR arrangements. It has also been addressed by a Conservative-Liberal Democrat coalition government in the UK which appears to be particularly unwilling to entertain the idea of top-down policy making in Scotland.

The aim of the article is to explore these issues by asking two main questions: why were formal mechanisms used so rarely from 1999-2007, and what factors have produced muted rather than problematic IGR in this new era of party incongruence?¹ The common factors are a 'logic of informality' that suits both sides, but also an asymmetry of power between governments that constrains the strategies that are realistically available to devolved governments. The article also considers the tendency (from 2007-11) for inter-party relations to pre-empt intergovernmental relations. It concludes with a brief discussion of the initial effects of the formation of a Conservative-Liberal Democrat UK government in May 2010.

The New Era of Party Incongruence

The SNP government followed eight years of remarkably informal and uncontroversial relations between the UK and Scottish governments. From 1999-2003 and 2003-2007,

Scottish Labour and the Scottish Liberal Democrats formed a coalition (the ‘Scottish Executive’) which commanded the majority of MSPs in the Scottish Parliament. In each parliamentary session the parties produced a ‘partnership agreement’ setting out in detail their legislative and policy plans. While the Liberal Democrats may have done disproportionately well out of the agreement, Labour was the senior partner in both sessions (McGarvey and Cairney, 2008: 121). This allowed relations to develop between the UK and Scottish executives as if there was a shared party in government.

From 1999-2007 the Scotland-UK IGR strategy was clear: discussions were conducted informally and almost entirely through executives (ministers and civil servants) rather than legislatures or the judiciary. Other mechanisms for negotiation and dispute resolution existed but were used rarely. The role of the courts was minimal. There were no references of Scottish bills to judicial review; the Scottish Executive was more likely to ‘remove offending sections’ than face delay (Page, 2005). The role of Holyrood-Westminster relations was limited, and the Scottish Parliament was restricted to the passing of ‘Sewel’ motions – ‘legislative consent’ motions passed by the Scottish Parliament giving consent for the Westminster Parliament (and in effect the UK government) to pass legislation on devolved policy areas (Cairney, 2006; Cairney and Keating, 2004). There was a clear bias towards informality between executives. Although a *Memorandum of Understanding* (MoU) was produced to guide the conduct of executives, and individual concordats to encourage cooperation between departments, the day-to-day business was conducted through civil servants with minimal reference to them. As Horgan (2004: 122) suggests, there was an ‘informal flavour’ to formal concordats since - as in Canada and Australia - they are not legally binding. Rather, while they took some time to produce and were initially taken very seriously by Whitehall departments, they represent a, ‘statement of political intent ... binding in honour only’ (Cm 5240, 2001: 5). The MoU’s main function is to promote good communication between executives, particularly when one knows that forthcoming policies will affect the other. This emphasis is furthered in the individual concordats which devote most of their discussions to reiterating the need for communication, confidentiality and forward notice (the ‘no surprises’ approach that allowed the UK government, to a large extent, to see what was coming). For some of the civil servants that produced them, they represented ‘common sense’ with little need to refer to them (Sir Muir Russell, former Permanent Secretary, Scottish Office and Scottish Executive, in Commission on Scottish Devolution, 2008a: 2; see also Jack McConnell, former First Minister, Commission on Scottish Devolution, 2008b: 13).

Although the Joint Ministerial Committee (JMC) was designed to allow the UK government to call a meeting with the devolved governments to coordinate working arrangements, discuss the impact of devolved policy on reserved areas and vice versa, share experience and consider disputes, it met infrequently (Trench, 2004).² The JMC is a consultative rather than an executive body, with issues to be referred to it on the rare occasions that discussions between executives break down. Such was the bias against taking issues to the JMC that its members found little to discuss (Jack McConnell, Commission on Scottish Devolution, 2008b: 12; Jim Wallace, former Deputy First Minister, Commission on Scottish Devolution, 2008c: 9). Instead, bilateral working

relationships between government departments became the norm, while matters of concern were discussed through political parties (and Scottish and UK Labour ministers in particular). The existence of coalition in government in Scotland complicated matters to some extent, and the most high profile instance in which an issue ‘broke free’ from the quiet world of IGR related to a policy (free personal care for older people) linked closely to Liberal Democrat aims (there were also tensions on PR in local elections). Yet, there was no systematic pattern of disputes and little demand for high profile resolution. The formal system of IGR was arguably prepared as an afterthought and treated as such (Mitchell, 2010).

In 2007, the SNP formed a minority administration and changed its name to the symbolically significant ‘Scottish government’. It had already stated that it would not continue with the existing arrangements. Instead, it would: push for an independent civil service; discourage Sewel motions; call for a reinstatement of regular JMC plenary meetings; challenge UK policies (such as nuclear power); and publicly ‘stick up for Scotland’s interests’ rather than (in Alex Salmond’s words) be careful not to be seen arguing with its ‘big brother’ (McGarvey and Cairney, 2008: 162). The new relationship appeared to begin almost immediately when then Prime Minister Tony Blair did not congratulate Salmond on his election as First Minister, and Salmond criticised Blair publicly for not consulting the Scottish government on plans to create a prisoner transfer agreement with Libya (that would eventually contribute to pressure on the Scottish government to release the ‘Lockerbie bomber’ – see Cairney, 2009b).³

Developments in UK politics also spilled over into the relationship. The ascension of a Scot, Gordon Brown, to Prime Minister prompted an increase in UK media and (particularly Conservative) party attention to Scotland’s disproportionate share of UK public expenditure (McGarvey and Cairney, 2008: 165), the number of Scotland MPs and the ‘West Lothian’ question (see Cairney, 2009a: 23) – perhaps producing the need for Gordon Brown to take a robust UK line on Scottish demands. Combined, the new UK and Scottish contexts provided the potential to reinforce a shift in IGR caused by party incongruence in 2007.

Yet, the new era of IGR did not materialise.⁴ The 2007-11 period has been marked by a striking level of continuity in UK-Scottish relations, largely because there is a strong logic underpinning IGR in the UK.

The Logic of Informality

The logic of informal IGR has direct parallels to the ‘logic of consultation’ between interest groups and governments. As Jordan and Maloney (1997) argue, close and policy community-like relationships between groups and government are pervasive as a ‘consequence of policy making requirements’. Governments and groups trade access and influence for information and advice; this ‘logic of policy making ... acts as a drive towards ... stable, regulated predictable relations’. The logic of ‘bureaucratic accommodation’ refers to the benefits of reaching a consensus (or at least practical understanding) with interest groups rather than imposing decisions. Although the UK is

characterised as a ‘majoritarian’ system associated with ‘top-down’ policy making (Lijphart, 1999), it does not operate as such. Instead, the UK government shares a common policy style with governments in ‘consensus democracies’, based on the need of civil servants to gather information from interest groups and legitimise decisions through consultation (Richardson, 1982; Cairney, 2011b). This need is strong since it encourages group ownership of policy and maximises governmental knowledge of possible problems. Further, the size of the state and scope for ‘overload’ necessitates breaking policy down into more manageable sectors and sub-sectors that are less subject to top-down control (see Cairney, 2008a). Even during periods of political conflict, this logic ‘tends to reassert itself and policy community-type features can emerge in the context of the conflict’; on many occasions the resolution of high profile controversies requires disaggregation into a series of ‘less contentious manageable facets that are processable within policy community arrangements’ (Jordan and Maloney, 1997: 570).

The broader lesson is that few governments are willing or able to bear the cost of continuous top-down policy making, even if their political structures appear to give them a particular advantage in this regard. Therefore, a consistently top-down approach to IGR is no more likely than a top-down approach to consultation. Instead, we would also expect executives to find ways to cooperate for mutual gain. This logic can be linked to what McGarvey and Cairney (2008: 167) call ‘positive’ reasons for informal IGR, bearing in mind that they may be more positive for the executives involved rather than those they represent and are accountable to (Cairney, 2009a: 5-7). The classic example is the Barnett formula used to determine changes to devolved public expenditure. There is considerable debate in the literature about the origins of the formula, what it was designed to do and what its effect has been (described in Cairney, 2009a: 5-6 and 23, note 5). For our purposes, the most relevant reason to maintain Barnett is that it suited both parties. For Scottish administrations, it was one way to minimise a reduction in Scotland’s share of UK public expenditure, while for the Treasury it was a way to avoid spending a disproportionate amount of time on protracted annual budget negotiations for sums that are small when compared to its overall commitments.

A key tenet of the policy communities literature is that policy issues are portrayed as dull affairs to limit public interest and participation. If an issue can be successfully presented as a ‘technical’ issue for experts (related to a problem which has largely been solved), power can be exercised behind the scenes by a small number of participants (Baumgartner and Jones, 1993; Jordan and Maloney, 1997). In this sense, the Barnett formula represents a successful attempt by decision makers in Scotland and the UK to keep the big and potentially most contentious questions of funding off the political agenda. Barnett ‘solved’ the problem of devolved finance; the annual budget rounds became almost automatic, with scope for negotiation only on the ‘technical’ issue of Barnett consequential (the sums received by devolved governments when levels of spending in England change). Further, their relationship was helped considerably during the 1999-2007 period by significant rises in UK and Scottish public expenditure. The types of disagreements on the adequacy of the funding settlement that we are now witnessing between the UK, Scottish and other devolved governments are unusual; fundamental issues of territorial finance have tended to arise sporadically, for example,

when linked to other events such as the election of a nationalist party just before the rise of a Scottish Prime Minister or an economic crisis.

A second example is the extensive use of Sewel motions (76 were passed from 1999-2007). The Sewel motion became a convenient tool to minimise the need to coordinate separate legislation when the boundaries between reserved and devolved responsibilities were unclear and/ or when a UK-wide approach was necessary to maintain consistency of standards. Instead, the UK government legislated on Scotland's behalf and often devolved the day-to-day responsibility for policy to Scottish ministers ('executive devolution'). In many cases, the issues were innocuous and commanded cross-party support. Yet, there were also instances of political cowardice when Scottish Executive ministers seemed keen to remove issues from the Scottish agenda, reinforcing opposition party claims that the Scottish Parliament was marginalised from issues of IGR and that formal contact on Westminster legislation affecting Scotland should involve a relationship between legislatures as well as executives (Winetrobe, 2005; Page and Batey, 2002).

The overall lack of formality in IGR was also criticised by the House of Lords Select Committee on the Constitution (2002): since most contact between ministers and parties was by email, telephone or 'quick words when people meet socially' it was not recorded in the same way as formal minuted meetings. The report suggests that such informality depends on the 'fundamental goodwill of each administration toward the others'. However, if the importance of formal contacts, for example through the JMC, was not made clear from the start, this may store up problems when Scotland and the UK do not share the same party of government (or at least when those in key posts no longer know each other – see also Jack McConnell, Commission on Scottish Devolution, 2008b: 14).

Yet, such fears proved to be largely unproven. The informal relationships between executives did not disappear as soon as the SNP formed a government and new faces appeared at the negotiating table. Instead, new and informal working relationships developed rather quickly. Although there have been more instances of high profile disagreements since 2007 (see Cairney, 2009a: 21-3), there is a still tendency for this charged atmosphere to give way to a more humdrum, day-to-day relationship as different actors (usually civil servants) work through the details. In other words, the SNP government appeared to accept its relationship with the UK government in much the same way as its predecessor. These informal links developed partly because the new Scottish government frequently had as much to gain as the old Scottish executive.

In this regard, we can again draw parallels with group-government relations and the decision by interest groups to engage in insider or outsider strategies (Grant, 1995; Maloney et al, 1994). If we treat the SNP as a radical interest group, we may ask: what does it have to gain from its relationship with the UK government? We may wonder if its leadership behaviour revolves, 'around one central point: how many recruits will this bring into the organization?' (Alinsky, 1971: 113; Grant Jordan, in correspondence). Ministers may be driven by the pay-offs (attention and popularity) associated with standing up for Scotland's interests; engaging in, and publicising, disputes even if there is

no hope of winning them. Indeed, this motivation may be stronger for political parties than interest groups. Yet, as Mitchell (2008) argues, it is difficult to treat the SNP as radical. Instead, the ‘fundamentalists’ have been replaced by ‘pragmatists’ in the SNP hierarchy which is ‘more in search of respectability than revolution’ (2008: 248) and which has found it more effective to recruit members through the ‘presidentialization’ of its leader and professionalisation of the party’s operations (McGarvey and Cairney, 2008: 63). In other words, dignified pragmatism in government may be a better fit with the new image of the SNP leadership than the pursuit of conflict for electoral gain.

The SNP has largely been willing to adopt an insider strategy which includes an acceptance of the ‘rules of the game’, or a willingness to engage in self-regulating activities (the value of which some of the party rank-and-file may not appreciate) in the short term, to allow it to benefit in the long-term. The best example may be the SNP’s attitude to negotiations with the UK over EU policy formulation. There has been a stronger rhetoric on Scotland’s independent role on the world stage (marking a shift, to some extent, from para- to proto-diplomacy - Keating, 2010: 162) and the desire of the Scottish government to enjoy a higher status than before in relation to the UK, perhaps even taking the lead in UK/ EU negotiations in areas such as fishing (Cairney, 2011c). Yet, SNP ministers have also operated within UK structures, agreeing to uphold a principle that they criticised in opposition: ‘the devolved administrations are involved in the formulation of the United Kingdom line but on the basis that they may not disclose to anyone – including their own legislature or assembly – what disagreements they have had with the UK government over the formulation of that line’ (Johnston, 2007; see also Cairney, 2009a). Overall, the SNP approach has been ‘pragmatic’, consisting of a greater propensity to make direct submissions to EU institutions (e.g. regarding the North Sea ‘supergrid’) but ‘not to disrupt the UK position’ and based on an understanding of the ‘reality of the pecking order where member states have the weight’ and devolved governments make a relatively small contribution to EU policy making (interview, Scottish government Special Advisor, July 2009; see also Keating, 2010).

We can also see more pragmatism than posturing on domestic matters. The SNP has pursued strongly the formalisation of IGR through the JMC machinery and has also sought the cooperation of its counterparts in Wales and Northern Ireland to boost the status of devolved governments in relation to the UK government. However, it has rarely pursued this agenda through anything other than diplomatic means. Overall, the SNP government has ‘surprised many by not being overtly confrontational’ and by encouraging its civil service to be, ‘open, cooperative and helpful to their counterparts in the UK government, rather than to maximise points of friction’ (Trench, 2007: 46; Trench, 2008b: 56). While there have been publicised short-term disagreements, these often give way to longer term negotiations behind the scenes. For example, the issue of Barnett consequential for the London Olympics has parallels in Jordan and Maloney’s (1997) discussion of Brent Spar (which began as a Greenpeace protest and public denunciation of BP, followed by a lower profile negotiated settlement using the government machinery). What began as a public dispute soon changed into an issue processed behind the scenes (although it has recently been referred to the JMC – see below). Similarly, the SNP’s criticism in opposition of Scottish Executive attempts to

pilot an airgun licensing scheme in Scotland, as part of an overall UK strategy, was followed by its pursuit of the same idea when in government (Cairney, 2008b; McGarvey and Cairney, 2008: 163). These examples supplement the more ad hoc links between executives during crises (such as the terrorist attack on Glasgow airport, the fuel crisis caused by strikes at the BP Grangemouth oil refinery, the foot-and-mouth outbreak and the spread of swine flu – Trench, 2007; Mitchell, 2010). Overall, ‘a surprising amount of the old informality and co-operation has re-emerged as ministers at both levels realise that they have problems in common and need each other’ (Keating, 2010: 146).

The SNP government’s promotion of Sewel motions also suggests that the expediency and convenience of the process extends beyond governments with the same party (Mitchell, 2010; Crawford, 2007; Crawford, 2010). It approved slightly fewer motions (averaging 8.5 per year compared to 9.5 from 1999-2007, compared to an average of 10.5 and 12.9 Scottish Parliament Acts respectively) and has sought, when possible, to promote Scottish parliamentary measures instead. However, we have not witnessed the type of sea change we might have expected from a party which, in opposition, presented principled stances against the process (for a taste of the parliamentary debate on this issue, see Cairney, 2009a: 12).

One issue that seems to contradict the idea of party continuity is the diminished ability of the civil services to maintain close links since 2007 (see also Richard Parry’s article in this volume). Yet, the links between civil servants in the early years of devolution have been exaggerated and they have weakened naturally over time as the UK and devolved governments deal increasingly with different issues. The need for mobility between Edinburgh and London was ‘a decisive argument in the decision to keep a unified civil service’ (Keating and Cairney, 2006: 53), but 70% of senior civil servants in Scotland have not enjoyed a spell working in a Whitehall department (2006: 55). Further, the idea of a Whitehall club in which civil servants in Scotland were consistently invited to policy meetings (Parry and Jones, 2000: 63), and developed personal networks, has been undermined over time by significant Whitehall ignorance of political differences in Scotland and a decreasing willingness among civil servants to trade-off time spent in the UK for time lost developing policy in Scotland (secondments to the Scottish public or private sectors may also be as likely to advance their careers as a spell in Whitehall). This is particularly the case in departments such as health and education where policy has diverged and policy makers at the UK and Scottish levels face different problems. Evidence from the Scottish government’s former Permanent Secretary, John Elvidge, suggests that the informal contacts between civil servants in Scotland and England had already diminished before the SNP took office. The SNP’s handling of a high profile disagreement on foot-and-mouth compensation in 2007 was said to have undermined the UK government’s willingness to engage informally through the civil service network – but this would be, ‘breaking quite a slender thread’ (Elvidge, in McGarvey and Cairney, 2008: 131). In other words, the SNP era merely accelerated a natural reduction, but not abolition, of the formal and informal circulation of papers and ideas across the UK civil service network (Keating, 2010; although see Parry’s article in this volume which notes the significance of the appointment of Sir Peter Housden as Permanent Secretary in June 2010. Housden was a Permanent Secretary in the UK government’s Department for

Communities and Local government, with no previous experience in the Scottish government).

Overall, the 2007-10 period (i.e. before the UK General Election in 2010) displays a notable degree of continuity. UK and Scottish ministers developed fairly cordial relationships and the SNP has operated rather quietly within a UK intergovernmental framework: contributing to a UK line on EU affairs; pursuing a reasonable degree of formality in IGR; negotiating policy issues behind closed doors; passing Sewel motions and generally working within an already-changing civil service framework. The logic of informality is strong and governments from most parties have much to gain from these arrangements.

The Asymmetry of Power

The UK is asymmetrical in two senses - first because devolution was extended to a small share of the population, with Scotland (8.6%), Wales (4.9%) and Northern Ireland (2.9%) accounting for 16.4%; and, second, because the balance of power is tipped towards UK policy departments dealing predominantly with the English population and, in particular, the Treasury which is both a player and the referee in negotiations with devolved governments. As Keating (2005: 120) suggests, the UK 'centre' is faced with small devolved governments which do not match the powers of federated or devolved authorities in countries such as Germany, Spain, Belgium or Canada. Scotland, Wales and Northern Ireland are not part of a collection of powerful regions and the UK does not have a 'supreme constitution' guaranteeing a level of autonomy for devolved governments (Watts, 2007). This imbalance of power was summed up by the early role of the Secretary of State for Scotland as the UK government's representative in Scotland. Under its first Scottish Secretary, John Reid, the Scotland Office was prepared to intervene in Scottish politics in a way viewed by the Scottish Executive as interference (Leicester, 2000: 27; McGarvey and Cairney, 2008: 159), while under its second, Helen Liddell, there was still a perception that it was a legitimate Scottish Secretary role to manage, if not the policy process, then at least the internal affairs of the Scottish Cabinet (Mitchell et al, 2001: 56).

While the visibility of the Scottish Secretary receded from 2002, this was at the prerogative of the UK government. Indeed, it reinstated the full-time role in 2007, in part reflecting the need for more mediation between different parties but also the desire for Labour to regain political ground in Scotland. Although Jim Murphy was initially at pains to stress his role as 'Scotland's man in the cabinet rather than the cabinet's man in Scotland' (Trench, January 2009a: 71), it is difficult to ignore the party political overtones of statements about the 'arc of insolvency' (in relation to Alex Salmond's previous discussion of certain independent countries as the 'arc of prosperity') and the apparent strategy of refusing First and Prime Ministerial meetings to 'equate Salmond on a par with Murphy and therefore less important than Brown' (Cairney, 2011c). Murphy's involvement also produced, from the perspective of some members of the Scottish government, a 'less smooth, less direct' relationship, or a 'wedge' between previously direct Scottish and UK government departmental relationships as more issues are

funnelled through a third party (interview, Scottish government Special Advisor, July 2009). Certainly, relations seemed smoother when the Scottish government previously dealt with David Cairns (Minister of State) when the Scottish Secretary was still a part-time role (Mitchell, 2010) (this narrative is disputed by the Scotland Office, interview, July 2009).⁵

The asymmetry of power has three main effects. First, the devolved governments do not have a mechanism with which to oblige the UK government to consult and there has been a tendency for UK ministers to disengage from the formal IGR process. The lack of JMC meetings during a Labour-led government was: ‘a clear indicator that devolution is no longer a prime concern of the Prime Minister and other politicians’ (Trench, 2004: 515–6). The UK government was also slow to agree to the SNP’s call for the reinstatement of regular JMC meetings - the JMC plenary met only twice from 2007-10, while the JMC (Domestic) met once (Trench, 2008a; 2009a).

Second, civil servants in Whitehall often forget about Scotland and neglect to consult, then make statements on UK policy without a Scottish qualification or opt-out – a problem which grew over time as devolution faded from view in London (Keating, 2005: 125; Keating, 2010; McGarvey and Cairney, 2008: 167; Cairney 2011c). In other words, devolved governments may generally pursue an insider strategy but are often treated effectively as outsiders. These issues were discussed briefly in the public domain following a leaked report from the Scottish Executive’s EU office (Aron, 2006; SNP, 2006). The main finding was that the best way for the Scottish Executive to influence Europe was through Whitehall (particularly since the UK government discouraged the Scottish Executive’s direct EU involvement - Cairney, 2011c), but its success depended on a disproportionate amount of coordinated work by Scottish officials. According to the report, in some cases, Whitehall departments had deliberately excluded their Scottish counterparts from the process, while in most cases the problem was that the Executive was not consulted at a stage early enough to influence the direction of policy. The overall success of IGR has also varied strongly by policy area (and, in some cases, personalities) with, for example, a long tradition of cooperation in agriculture contrasting with areas such as economic development in which intra-governmental contact between the Scottish Office and the relevant Whitehall department was minimal (interview, Scotland Office official, 2009; perhaps the nature of the devolved settlement, to particular policy domains, also affects overall IGR).

Third, Scottish actors are reluctant to challenge the authority of the UK government. For example, Page and Batey (2002: 513; Page, 2002) suggest that the UK government drove the agenda for policy coordination. Most Sewel motions came from UK departments after the legislative slot had been secured, with Scottish ministers ‘effectively forced to agree to Westminster legislation in the devolved areas’ given the uncertainty over devolved government powers and the prospect of the UK government referring the issue to the Judicial Committee of the Privy Council. Further, in high profile issues of disputes – such as free personal care for older people and Hepatitis C compensation - the Scottish Executive was reluctant to ‘rock the boat’ and instead accepted UK ‘victories’ to maintain its good relationship with Whitehall (Trench, 2004; although a focus on a very small number of

disputes exaggerates their overall importance). The SNP is also, in more cases than we might expect or witness, stoical about its status as one of many UK government departments (interview, Scottish government Special Advisor, July 2009). In particular, it recognises the limits to its negotiating power with a Treasury department that exerts considerable power across the UK government as a whole. The SNP finds itself in a difficult position. One of its main aims has been to present an image of governing competence (to further its agenda on independence), in part by demonstrating that it can use its existing powers effectively. This is not consistent with a strategy of *continuously* venting its frustration with the power of the UK government.

Overall, the asymmetry of power reinforces the logic of informality by providing clear incentives for action. Any Scottish government has much to gain from relatively quiet negotiations behind the scenes. In contrast, the substantive payoffs from challenging the UK position are unclear. The Scottish government does not have any formal powers or a written constitution on which to draw and is unlikely to win high profile disputes with the UK government. While, in some cases, it might achieve electoral gain by ‘standing up for Scotland’, in others it may face being ignored by the UK government (and media) or be forced to engage in rather embarrassing debates with the Scottish Secretary, not Prime Minister, that expose its relatively weak position.

Inter-Party Relations

The third aspect of informal IGR resulted from minority government: many potential intergovernmental issues were played out within Scotland without necessarily reaching a decision-making point at the UK level. For example, the SNP government may have relished a debate with the UK government over its plans for a local income tax to replace the council tax. It would have produced the loss of a UK (council tax) benefit that the Scottish Parliament does not have the power to change; Treasury rules dictate that the Scottish government has no claim on any money that might be saved from (reserved) UK expenditure as a consequence of devolved policy decisions, and the UK government did not appear willing to negotiate on this or previous occasions. However, the SNP did not have enough opposition party support in the Scottish Parliament to pass the legislation. Parliamentary opposition, along with the uncertainty over funding (particularly since the Scottish government was preparing for an overall reduction of its budget), was cited by Finance Secretary John Swinney as the reason to withdraw the policy (Scott, 2009: 75). Similarly, although the Scottish government was highly critical of its budget settlement in 2007, much of this debate was played out in the Scottish Parliament as Scottish ministers attempted to deflect opposition criticism and justify the incomplete delivery of manifesto commitments.

Perhaps most importantly, IGR has been rather muted because the fundamental bone of contention between the SNP and UK governments – constitutional change – has not come to a head. Instead, the SNP initiated a ‘national conversation’ with the Scottish population, in part as a means to keep the issue on the public agenda but also put off a decision until the SNP’s preferred 2010 referendum. Again, most debates about the referendum process itself were played out in the Scottish Parliament, with the SNP

needing the support of at least two other parties to pass a referendum bill. This did not happen. Indeed, the opposition parties appeared eager to reject the bill before the UK general election in 2010, prompting the SNP to publish a draft bill for public consultation rather than parliamentary consideration (Gunn, 2010). The bill itself was not introduced to Parliament during the 2007-11 session.

The lack of Scottish government ability to innovate with legislation has the potential to cause an imbalance of conflict towards instances in which the Scottish government can obstruct UK policies. The main example has been nuclear power. While the issue of energy is a reserved matter, the Scottish government has final responsibility for planning decisions (devolved to ministers since the UK Electricity Act 1989) and has signalled a willingness to refuse planning permission for any new nuclear power plant. Yet, the boundaries between devolved and reserved in this area have always been unclear and the Scottish government's power has never been fully established. The line by previous Scottish Executive ministers was that it could make decisions on nuclear power under the executive devolution granted by the UK government (Cairney, 2006: 441) and that planning powers to secure energy supplies were reserved (Summers, 2002). More importantly, a Scottish-UK dispute has rarely seemed likely. Tony Blair assured Alex Salmond in 2002 that the final decision rested with the Scottish Parliament (Summers, 2002), while an acceptance of the Scottish veto was also contained in its energy White Paper in 2008 (Trench, 2008b; even though UK ministers criticised the SNP stance).

Overall, the dynamic of inter-party relations (under minority SNP government) reinforced the logic of informality by closing off many avenues for public intergovernmental disputes on high profile issues. While the SNP government may have preferred to supplement its generally valuable informal relationships with a select number of high-profile disputes of its own making (or to publicise a key policy dispute to encourage support for constitutional change), it has been blocked by the Unionist parties within the Scottish Parliament. The UK government has also avoided pushing other potentially divisive issues towards the need for intergovernmental resolution.

The Future of IGR: Business as Usual?

The election of a majority SNP government in 2011 suggests that a referendum on independence will take place in two or three years (note that this article was written before the election). Until then, the most likely constitutional change will come from the recommendations of the Commission on Scottish Devolution - set up following a motion in the Scottish Parliament passed by the main opposition parties, financed and serviced by the UK government, and led by Professor Kenneth Calman⁶ (the proposals were followed by a Labour government White Paper Cm 7738, 2009, then taken forward by the coalition government through the Scotland Bill 2011; see also Trench, 2010a). These include plans to: reduce UK income tax by 10 pence in the pound to oblige the Scottish Parliament to make a decision on how much income tax should be raised; devolve some minor taxes; devolve responsibility for a small number of policy issues (such as air weapons, drink drive limits and prescribing medicines to treat drug addiction); reserve

more responsibility for a small number of policy issues (such as insolvency and the regulation of health professions), and, formalise and extend the process of IGR.

The Calman commission report suggested that the changes in responsibilities should go hand in hand with new IGR arrangements, suggesting three main changes. First, the Joint Ministerial Committee (supplemented by a JMC Domestic) should become a body to foster close working and cooperation relationships rather than just dispute resolution (perhaps like the JMC Europe, which meets regularly to discuss EU policy). Further, since the UK government will devolve more tax powers, it recommended establishing a JMC on Finance to discuss macro-economic policy as well as taxation. Second, there should be more training for UK civil servants to improve their knowledge of devolution, and the civil service code should be amended to ensure cooperation and mutual respect. Third, the Sewel process must be used better to foster meaningful links between Parliaments and there should be a Westminster equivalent to the Sewel motion. Yet, it is unclear how much demand there is within government for such reforms (IGR arrangements are not a feature of the new legislation, although note the unusual involvement of a Scottish Parliament committee in the assessment of the Scotland Bill, a bill of the Westminster parliament). Further, even if formal intergovernmental mechanisms become more of a regular feature, we may still find that policy makers are reluctant to engage and, instead, find other arenas in which to resolve issues. This is certainly a feature of group-government relations, where formal consultations are supplemented by pre-consultation (from informal discussions to the establishment of working groups to set the terms of reference for consultation).

A more likely source for IGR change was the formation of a Conservative-led coalition government in the UK. The policy communities literature has long demonstrated that the need to appear legitimate in the eyes of those they govern is a strong driver for unelected decision makers to consult widely - hence part of the reason that civil servants consult so much with pressure participants (Richardson and Jordan, 1979). This is an issue that the Conservative party effectively faces in Scotland because in 2010 it returned only one MP. The result was qualified to some extent by the Conservative coalition with the Liberal Democrats, a party with a respectable number of Scotland MPs (11, compared to Labour's 41 and the SNP's 6) and providing the likely recruitment ground for all Scottish Secretaries (beginning with Danny Alexander and then Michael Moore). The Conservative position was also helped by the status of the Scottish Conservatives in the Scottish Parliament - not only as the holder of 17 seats (13%) from 2007-11, but also as a party with often similar views to the SNP and the key player in the SNP's successful attempt to maintain a minority government for a full four-year session (the Conservatives and SNP voted together on parliamentary motions 72% of the time - MacGregor, 2010). Yet, there was still a sense, at least until the prospect of a referendum diminished, that the SNP government could use any dispute with the UK government as a way to remind Scottish voters of the legacy of Thatcherism (associated, particularly in Scotland, with a top-down, impositional style of policy making) and therefore increase support for independence. Such concerns perhaps contributed to the promotion by the UK government of the rather vague idea, signalled by David Cameron (2009) during the general election campaign, that it would govern the Scots with 'respect'.

The Conservative's most significant response was *not* the institutionalisation of formal IGR, but there have been some notable developments. The UK and devolved governments had already produced a revised *Memorandum of Understanding* before the 2010 election (Cabinet Office, 2010; Cm 7864, 2010) and it largely represented a logical progression from the MoU that was produced in 2001 and rarely referred to by executives (Trench, 2010b). However, the new arrangements (specifically the new 'Protocol For Avoidance And Resolution Of Disputes') were then used to allow the devolved governments to refer an issue of dispute (the refusal of the Treasury, during the term of the previous Labour government, to pay Barnett consequential on spending for the London Olympics) to the JMC (Trench; 2010c). The JMC plenary also met very quickly (less than a month) after the 2010 election, was chaired by David Cameron, agreed a 'role' for Scottish ministers in European council negotiations, and produced a schedule of further meetings (Scottish government, 2010a).

However, we can still identify both aspects of IGR: a limited (albeit now more regular) role for formal meetings; and, an asymmetry of power combined with a lack of UK attention to devolution (and some ambiguous rules on IGR) with the potential to produce Scottish government frustration on issues. The most relevant example is the UK government's Comprehensive Spending Review. While the JMC meetings establish the need for the UK to consult with the devolved governments on its spending plans, the MoU (Cm 7864, 2010: para 6) states that 'as a matter of pre-existing practice', 'advance notification' on UK budget proposals do not take place or are very limited. Such confusion prompted the SNP to complain that it was not consulted adequately on measures to reduce public spending – including the UK government's bonfire of the quangos (Edwards, 2010; see also the concern by Trench, 2011 that the Scottish Secretary does not fully respect the Sewel convention) – and the devolved governments have issued two joint statements expressing concern about UK government strategy (Scottish government, 2011).

Yet, the Conservative approach has also been met by a generally non-confrontational strategy by the SNP. Most notably, it was highly critical of the Calman Report (and its financial provisions in particular), but sought to amend rather than reject the Sewel motion on the Scotland Bill 2011, then voted in support of the original motion once its amendment was defeated. It also passed four Sewel motions to allow the new coalition government to legislate on devolved matters. There have been some disagreements, regarding the Scottish government's access to the fossil fuel levy and the UK government's removal of devolved government access to 'end year flexibility' accounts (plus a spat over the non-issue of the Scottish variable tax rate – Scottish government, 2010b), but not enough to suggest that IGR has changed fundamentally since 2010.

The election of a majority SNP government in 2011 will certainly have some effect. For example, two of its key policy plans will require some discussion with the UK: the SNP may request the power to tax alcohol to introduce a minimum price; and, a reform of council tax will require a discussion on council tax benefits. Most importantly, the prospect of a referendum on independence will at least require some discussion about

how the question should be worded and how the governments should interpret the results. The SNP also has a new incentive to publicise any problems with its relationship with the UK Government. In other words, ‘a UK Conservative government in office during a period of economic retrenchment probably provides the best chance for the SNP Government to demonstrate that it would be better making all of its own decisions, and it would be a surprise if it did not exploit that opportunity’ (Cairney, 2011d: 7). Much will depend on the attitude of the UK Government which has, so far, recognised the SNP Government’s mandate and sought to engage constructively on key issues such as control over corporation tax, renewable energy funding and the Crown Estate (Maddox, 24.5.11).

Conclusion

The UK intergovernmental style is informal – a feature that endures, to some extent, despite varying levels of party congruence. Informal IGR was a particular feature when the Scottish and UK governments effectively shared a party of government. Formal mechanisms to discuss and resolve intergovernmental issues were rare. Instead, the executives worked through their civil services and shared Labour party and ministerial contacts, and relied on measures, such as the Barnett formula and Sewel motions, to make the process of IGR semi-automatic.

The formation of an SNP government had some effect on this intergovernmental relationship. There have been more public disputes, the Scottish government has pursued measures to formalise IGR, and the reduction in relatively close personal relationships may have necessitated a higher degree of formality between ministers. The SNP has also been slightly less receptive to the Sewel process and has been content to consider funding alternatives to Barnett when in government. Yet, the overall effect has largely been piecemeal, with high profile SNP calls for the reinstatement of JMC meetings having, at best, an uncertain effect. Whitehall departments have also shown a continuing ability to forget to consult the Scottish government (Trench, 2008b: 56). Informal and ad hoc relationships between ministers and civil servants in each executive are still the norm.

These relationships endure for two main reasons: the logic of informality or mutual gain, in which the UK government has minimal incentive to consistently impose policy from the top and the Scottish government often has as much to gain from pursuing an insider strategy; and, the asymmetry of power which often allows the UK government to neglect the relationship and dissuades Scottish executives from pursuing issues in public. In the first phase of the new SNP era (2007-11), this UK intergovernmental logic was reinforced by the effect of inter-party relations, in which most policy issues which could have caused intergovernmental conflict were instead processed or blocked by parties in the Scottish Parliament. The post-2010 period displays, so far, an extended period of stability and continuity despite further complications to levels of party congruence. The ‘logic of informality’ appears to be as significant as the ‘logic of consultation’.

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ENDNOTES

¹ It draws primarily on the policy literature and documentary analysis, supplemented by interviews conducted as part of a wider research project on territorial policy communities (for more details see Keating et al, 2009).

² The JMC 'plenary' did not meet from 2003-7. The JMC (Europe) met much more frequently.

³ Although Salmond had less criticism for Brown, the pair did not meet regularly. See H. MacDonell 6.2.08 ‘Crisis – but First Minister and Brown haven't met for a year’ The Scotsman <http://news.scotsman.com/scotland/Crisis--but-First-Minister.4954040.jp>

⁴ Indeed, the changing Scottish government relations with *local* government are much more striking – see Cairney, 2011c.

⁵ There is particular disagreement about the extent to which the Scotland Office helped or hindered a deal with the Ministry of Justice over the Somerville case (see Trench 2009b: 86) and the issue of Forth bridge funding.

⁶ Full details of the commission can be found here <http://www.commissiononscottishdevolution.org.uk/>