

Union at the Crossroads

Can the British state handle the challenges of devolution?

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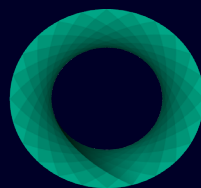
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Introduction

The future of the UK is increasingly in doubt. Ever since the vote to leave the European Union (EU) in June 2016, Britain's political institutions have been wracked by the turbulence triggered by Brexit. The sense of crisis and deep political division it has generated have spilled out on to the question of how the governance of the Union works, and what the different peoples within this state feel about it.

Given that a majority of voters in two parts of this four-part Union voted for the UK to leave the EU, and the popular majority in the other two to remain, Brexit was bound to generate considerable stress for the UK's territorial constitution. It has in key respects accentuated strains within the UK's system of devolved government that were already evident, and laid bare some of the power relationships that lie beneath it. Despite the relative speed with which the new devolved institutions have become accepted and legitimate parts of the UK system since they were introduced by Tony Blair's government in the late 1990s, Brexit has shown that on questions of state-wide interest, there is little to stop the preferences of these being set aside. On these matters the primacy of the UK government, founded on the sovereignty of the UK parliament, remains entrenched. This revelation has been a key factor in increasing support for Scottish independence, while Brexit has also reopened some highly challenging questions about the constitutional future of Northern Ireland.

Since February 2020, a new, very different, crisis has broken upon the UK in the context

of the global coronavirus pandemic. This too has had major repercussions for the frayed relationships between the central and devolved governments, but for different reasons. In this instance, all four parts of the UK face the same threat, and all have a clear and shared interest in responding effectively for the good of their populations. There is an ongoing need to co-operate for a variety of important, administrative reasons. And in this crisis, unlike Brexit, the devolved governments were responsible for some of the major policy decisions, for example on the nature and extent of lockdowns, while their British counterpart was, in key respects, revealed as the government of England, not Britain.

Early unionist hopes that the pandemic might bring these governments together, after several years of Brexit-fuelled conflict, quickly proved fanciful. There are various reasons for this – not least differing political choices; the perception that, during 2020, the UK government took a less cautious and prudential path than these other administrations; and the growing reluctance of Boris Johnson's government to bring the devolved administrations into the tent of collective decision-making after the first phase of lockdown came to an end.

One further political dynamic in the most recent period has undoubtedly also contributed to the sense that the UK's territorial constitution is buffeted by some increasingly powerful headwinds. This is the promotion of a more assertive and muscular style of unionism by Johnson and his government, a trend which has been some years in the making.¹ This 'hyper-unionist' style recycles earlier strains of Tory unionism, harking back to the Conservative Party's positioning as the bulwark of the Union

¹ M. Kenny and J. Sheldon, 'When Planets Collide: The British Conservative Party and the Discordant Goals of Delivering Brexit and Preserving the Domestic Union, 2016-19', *Political Studies* online advance access (2020a).

during the Irish Home Rule crises at the turn of the nineteenth into the twentieth century. But it has been reconstituted in a very distinctive, contemporary idiom, and is, somewhat paradoxically, associated with the priority of achieving a goal – Brexit – which many of its critics see as bound to loosen further the ties that bind the territories of the UK together.

Assertive unionism also reflects a wider recoil in the Conservative Party against the perceived weaknesses of the centrifugal model of devolution which Labour introduced at the end of the last century. This has been expressed in the form of a concerted push to strengthen the profile and influence of the centre in the devolved territories, which reflects fears that the constitutional order of the UK may have been compromised by years of incremental devolution under the asymmetrical model which Labour introduced. It is also an important part of the intellectual backdrop to the controversial UK Internal Market Act, passed by Boris Johnson's government in 2020, which seeks to limit the scope for policy divergence between the UK's jurisdictions, and gives UK ministers the power to spend money in the devolved territories on devolved functions such as transport and education. The centrality of this strand of thinking within British government circles has injected a significant new destabilising dynamic into the current situation.

As these different factors have forced questions about the future of the UK to the political surface, calls for root-and-branch reform of the constitutional order have been heard from various parts of the political spectrum. One strand of thinking, influential in particular within parts of the Labour Party, makes the case for wholesale reform of the UK constitution, including fundamental change to the ways in which the relationship between the governments of the UK is managed. Former Prime Minister Gordon Brown is a leading proponent of this idea, which is also supported by the Welsh Government.² In December 2020 the Labour leader, Sir Keir Starmer, announced that the party would run a UK-wide constitutional commission, advised by Brown.³ Meanwhile, the UK government itself has expressed some interest in reform of how the centre engages with territorial politics. As one of Theresa May's final acts as Prime Minister a review of 'UK Government Union capability' was commissioned, which was undertaken by a former Scotland Office minister and adviser to David Cameron during the 2014 independence referendum, Lord Dunlop.⁴ The Dunlop review was published in March 2021, along with an update on progress with a separate joint review with the devolved governments of the machinery for intergovernmental relations.⁵ Dunlop's recommendations included establishing a new senior cabinet position with responsibility for the constitutional

2 G. Brown, 'We need a new way to run a truly United Kingdom', *The Guardian*, 18 October 2020, <https://www.theguardian.com/commentisfree/2020/oct/18/we-need-a-new-way-to-run-a-truly-united-kingdom-gordon-brown>, last accessed 5 March 2021; Welsh Government, *Reforming our Union: Shared Governance in the UK*, October 2019, <https://gov.wales/sites/default/files/publications/2019-10/reforming-our-union-shared-governance-in-the-uk.pdf>, last accessed 5 March 2021.

3 E. Chappell and S. Rodgers, 'Starmer announces Labour launch of UK-wide constitutional commission', LabourList, 20 December 2020, <https://labourlist.org/2020/12/keir-starmer-launches-uk-wide-constitutional-commission/>, last accessed 5 March 2021.

4 UK Government, 'Review of UK Government Union capability: terms of reference', July 2019, <https://www.gov.uk/government/publications/review-of-uk-government-union-capability-terms-of-reference>, last accessed 5 March 2021.

5 M. Gove, 'Update on UK Government's Work to Strengthen the Union and Intergovernmental Relations', House of Commons Written Statement UIN HCWS885, 24 March 2021.

integrity of the United Kingdom, and a new UK Intergovernmental Council to reset relationships between the governments.⁶ From the perspective of central government, these issues have increasingly become bound up with the question of how to respond in the event that parties standing on a manifesto calling for a fresh independence referendum secure a majority at the Scottish Parliament election in May 2021, a scenario which recent polling suggests is likely to transpire.⁷

There is an extensive academic literature devoted to the introduction and development of devolved governments, and plentiful analysis of the territorial politics of each of the devolved parts of the UK. However, the current, increasingly intense debate about the failings and future of the Union has tended to overlook the question of how the administrative and political centre has approached issues of territorial management, and whether it too needs to change its culture and institutional structures. We attempt to address this gap, reflecting on the British state's response to devolved governments over the past two decades.

When these issues are considered, there is an ingrained tendency to view devolution primarily in relation to the politics and governance of the specific territories where new powers have been awarded, and to underplay the very significant interactions and spillovers for the UK state as a whole. But the question of how the administrative and political centre has understood and responded to devolution is, we suggest, crucial to tracing some of the

underlying causes of the growing tensions between the UK and devolved institutions. With extensive devolved powers now in place in each of Northern Ireland, Scotland and Wales, addressing the centre's institutional and cultural weaknesses in relation to the devolved bodies it has created will need to be a key priority for any future overhaul of the territorial constitution aimed at returning the Union to a more stable footing.

This paper takes these issues as its primary focus, setting out to consider how the British state has approached devolution since the millennium, and how it might need to change as we head into the post-Brexit, post-coronavirus context. It supplies a broadly chronological outline of the centre's thinking about devolution and its handling of political relations with the devolved governments. It starts with a consideration of how these relationships operated during the early years of devolution, then explores in some depth the inability of the centre to develop a coherent and strategic response to the risks posed to the UK evident following the 2014 Scottish independence referendum, before considering the additional strains which first Brexit and latterly the coronavirus pandemic have placed upon the system of territorial government. It reflects, in particular, on the weak and poorly functioning set of institutions that are supposed to manage relations between the UK and devolved governments, and considers why the British state has struggled to internalise the implications and realities of devolved governance.

⁶ Lord Dunlop, *Review of UK Government Union Capability*, March 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972987/Lord_Dunlop_s_review_into_UK_Government_Union_Capability.pdf, last accessed 30 March 2021.

⁷ Ballot Box Scotland, 'Holyrood Hub – 2021 Scottish Parliament Election', <http://ballotbox.scot/>, last accessed 5 March 2021.

The final part of the paper draws out some of the main implications of our analysis. A key theme running throughout is the endurance of what some commentary has long depicted as one of the hallmarks of the British state – its ingrained disinclination to engage deeply with its peripheral territories.⁸ Despite, and perhaps because of, devolution, this has continued to be the case.

The paper also stresses the impact of Whitehall's entrenched preference for managing territorial issues in informal, bilateral ways, which has also been a long-established feature of the administrative mindset that prevails within it, and its related readiness to develop a distinctly asymmetrical model of devolved government for the different territorial parts of the Kingdom. This approach was reciprocated by the devolved governments, which tended to want their own bilateral approaches to Whitehall as far as possible. These habits, and an ingrained preference for tactical and incremental – rather than strategic and far-sighted – responses to challenges as they arise, have left the centre laboured and uncertain in its responses to changing political conditions across the UK.

The focus of the discussion is primarily upon the centre's approach to those territories where new legislative institutions were introduced – Northern Ireland, Scotland and Wales. While this makes England a less prominent part of our story, it is worth noting the increasing tendency for the British state to be seen to be responsible for, and entangled with, England's administration – mostly by a process

of 'subtraction' as devolution elsewhere has been augmented over the course of these years.⁹ It is also worth emphasising at this stage that the context for devolution in Northern Ireland has been very different from that in Scotland and Wales. The reintroduction of devolution to Northern Ireland in the late 1990s was the culmination of an international peace agreement, was introduced while many sensitive issues relating to the legacy of the Troubles remained unresolved, and has been interrupted on a number of occasions when power-sharing between local unionists and nationalists has broken down. In this paper we discuss Northern Ireland primarily where this is relevant to our focus on the governance of the Union as a whole, and do not attempt a detailed analysis of the British government's wider approach to Northern Ireland over this period.

We suggest that devolution has, over time, laid bare one of the foundational ambiguities within the British constitutional order – the question of where sovereignty and power lie within its changing structures of government. Devolution has been widely understood by academic analysts and some politicians, particularly those operating in the devolved territories, as reflecting a shift within the centre towards a quasi-federal model of government and the partial acceptance that there are multiple sites of sovereignty within the UK.¹⁰ Our assessment of some of these key events and processes suggests, to the contrary, that such an interpretation neglects the enduring primacy of an older English idea of parliamentary sovereignty, which remains hard-wired in the UK's constitutional order,

8 J. Bulpitt, *Territory and Power in the United Kingdom: An Interpretation* (Manchester: Manchester University Press, 1983); R. Rose, *Understanding the United Kingdom: The Territorial Dimension in Government* (London: Longman, 1982).

9 M. Keating, 'Brexit and the Territorial Constitution of the United Kingdom', *Droit et société* 98:1 (2018), pp. 53-69.

10 V. Bogdanor, 'Devolution: Decentralisation or Disintegration?', *Political Quarterly* 70:2 (1999), pp. 185-194; D. Judge, 'This is what democracy looks like': New Labour's Blind Spot and Peripheral Vision', *British Politics* 1:3 (2006), pp. 367-396.

and constitutes the default understanding of many actors within the centre. A deep-seated unwillingness to face up to the tensions that exist between the latter and a rival vein of thinking, which regards the UK as a voluntary union relying upon the consent of its four territorial parts – an idea boosted by devolution, and given formal expression in the Good Friday/Belfast Agreement and the Edinburgh Agreement that led to the holding of a legal referendum on independence in Scotland – lies at the heart of many of the confusions, uncertainties and conflicts that characterise the relations between the British government and its devolved counterparts. The introduction of different forms of devolved government in the UK since the millennium has required the artful avoidance of the implications of these fundamentally opposed constitutional perspectives.¹¹ However, the twin, still reverberating, crises of Brexit and coronavirus have had the effect of making them increasingly visible, and they may also have forced unionists to reckon with them.

One final point of note concerns the make-up of the authorial team that have produced this paper. Two of us are academic researchers who have been involved in research relating to these themes for a number of years, and who have previously published work together on several relevant topics, including intergovernmental relations in the UK and the emergence of a more assertive strain of unionism in the Conservative Party.¹² The third author, Philip Rycroft, brings to bear extensive, direct experience of some of the events and processes that are under consideration here, drawing upon his time as the lead civil servant on constitutional

and devolution issues in the UK government between May 2012 and March 2019, as well as his experience in devolved government in Scotland between 1999 and 2009. This paper draws upon insights afforded by his close-up view of some of the decisions, events and mentalities that are described here, and his commitment to bringing these experiences to bear on some of the larger debates and questions about territorial government and politics which they illuminate. Between them, the authors have conducted approximately 30 interviews in the last three years with a range of officials and politicians. The analysis we offer draws upon these materials, as well as a wide range of academic literature, official documents and media commentary.

¹¹ A. Paun, 'Sovereignty, Devolution and the English Constitution' in M. Kenny, I. McLean and A. Paun *Governing England* (Oxford University Press 2018) pp. 45-67.

¹² Kenny and Sheldon (2020a); N. McEwen, M. Kenny, J. Sheldon and C. Brown Swan, 'Intergovernmental Relations in the UK: Time for a Radical Overhaul?', *Political Quarterly* 91:3 (2020), pp. 632-640.

The British state and the devolved Union – a historical overview

Below we provide a broadly drawn, and wide-ranging chronological overview of how the British state has approached the multi-level territorial constitution since the introduction of devolution at the end of the last century. This is by no means a detailed or comprehensive historical account.¹³ But our historical assessment informs reflection upon the trends and dynamics behind the UK state's approach to territorial politics over these years. We divide this period into three broadly sequential phases, and highlight some of the serial weaknesses of British territorial management in each of them. These include the underdeveloped nature of institutional arrangements for intergovernmental relations, a preference at the centre for dealing with each of the UK's component parts individually rather than considering the governance of the Union in the round, and a failure to internalise fully the implications of devolved governance for the roles of Westminster and Whitehall.

The early years of devolution, 1998-2011

Devolution was introduced to Northern Ireland, Scotland and Wales within two years of Labour's victory in 1997.¹⁴ The reforms it entailed transformed the structures and character of the British system of territorial government. Following endorsement in popular referendums, new legislative and executive institutions were set up in each of these territories.

These three devolved systems were from the start different to each other in some important respects.¹⁵ The Scottish Parliament was awarded extensive primary legislative powers, including control over policy areas such as education and health. The Northern Ireland Assembly was also given widespread primary legislative powers but operated under a distinctive power-sharing model which was set out within the Good Friday/Belfast Agreement, secured in 1998. Meanwhile, the National Assembly for Wales initially had only executive and secondary legislative powers, with precise functions transferred from Westminster on a piecemeal basis.

Some experts judged that these reforms had moved the UK in a decisively 'quasi-federal' direction, with considerable emphasis placed upon the apparent political irreversibility of these changes and their *de facto* impact upon the

13 For discussions of the historical background to the introduction of devolution see V. Bogdanor, *Devolution in the United Kingdom* (Oxford: Oxford University Press, 1999) and J. Mitchell, *Devolution in the UK* (Manchester: Manchester University Press, 2009). For detailed analysis of how devolution operated in practice during its early years see A. Trench (ed.), *Devolution and power in the United Kingdom* (Manchester: Manchester University Press, 2007a).

14 Northern Ireland had previously had devolved government between 1921 and 1972, when it was suspended during The Troubles.

15 A. Trench, 'The framework of devolution: the formal structure of devolved power', in A. Trench (ed.), *Devolution and power in the United Kingdom* (Manchester: Manchester University Press, 2007b), pp. 49-55.

territorial constitution.¹⁶ Devolution elicited the approval of the largest part of Britain's political and administrative elite, with many seeing these reforms as part of an overdue process of state modernisation. Opponents were mostly on the Conservative side, although there were some sceptics on the Labour backbenches, most famously the veteran Scottish MP Tam Dalyell. These voices bemoaned the impact on the UK's constitutional order, and raised questions about the sustainability of such an asymmetrical model of legislative devolution, the opportunities it could create for nationalist politicians, and the possibility that the English might come to resent this new model.¹⁷

One theme that was not afforded too much prominence in these discussions was consideration of their implications for the ways in which central government itself operated, and the relationships with these new governments that it would need to develop. As a few observers pointed out – unlike nearly all those democracies that developed more decentralised systems of governance in the second half of the twentieth century – political and administrative leaders in the UK's political centre expended little effort on the implications of these reforms for the core institutions of the state, or upon whether mechanisms were required to bring these new devolved authorities into regular dialogue with

Whitehall.¹⁸ Instead, various limited adaptations to existing ways of working emerged, gradually and incrementally.¹⁹ With the majority of the initial functions of the devolved legislatures having been transferred over from the Scottish, Welsh and Northern Ireland Offices, the jurisdictions of most Whitehall departments remained essentially unaltered. And there were no significant procedural reforms to the working of either chamber of the Westminster parliament as a consequence of devolution.²⁰

The main institutional innovation in the field of intergovernmental relations during the early years of devolution was the establishment of the Joint Ministerial Committee (JMC), a consultative body which was designed to bring ministers from the four administrations together as the occasion demanded. Its remit was set out in a *Memorandum of Understanding* (MoU) agreed in October 1999, which stipulated that it would be a forum for discussion of those 'non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities'.²¹ This body was intended as well to consider 'devolved matters if it is beneficial to discuss their respective treatment in different parts of the United Kingdom', to keep arrangements for liaison between governments under review, and to consider any disputes that might arise. The MoU made clear

16 Bogdanor (1999); Judge (2006).

17 T. Dalyell, *The Question of Scotland* (Edinburgh: Birlinn, 2016); J. Redwood, *The Death of Britain?* (Basingstoke: Macmillan, 1999).

18 J. Poirier, *The Functions of Intergovernmental Agreements: Post-Devolution Concordats in a Comparative Perspective* (London: The Constitution Unit, UCL, 2001); A. Trench, 'Washing dirty linen in private: the processes of intergovernmental relations and the resolution of disputes', in A. Trench (ed.), *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, 2007c), pp. 160-197.

19 A. Paun and R. Munro, *Governing in an Ever Looser Union: How the four governments in the UK co-operate, negotiate and compete* (London: Institute for Government, 2015).

20 G. Lodge, M. Russell and O. Gay, 'The Impact of Devolution on Westminster: If Not Now, When?', in A. Trench (ed.), *Has Devolution Made a Difference? The State of the Nations 2004* (Exeter: Imprint Academic, 2004), pp. 193-216.

21 UK Government, Scottish Executive and National Assembly for Wales, *Memorandum of Understanding on Devolution*, Cm 4444, October 1999.

that the JMC was a ‘consultative body rather than an executive body’, which would provide an opportunity for the sharing of perspectives and experience, but not make decisions itself. It was anticipated that plenary JMC meetings of heads of government would be held annually, and there would also be sectoral meetings in other functional formats. Three plenaries were held between 2000 and 2002, and forums on ‘Poverty’, ‘Health’ and the ‘Knowledge Economy’ also met occasionally in this period.²² But between 2003 and 2008 the only JMC forum that took place was that on European affairs, which allowed devolved ministers to feed views into UK positions ahead of EU summits. The other parts of the JMC machinery quickly fell into disuse, reportedly because ministers had struggled to find a useful purpose for these meetings in the political context of the time.²³

In the meantime, rather more extensive machinery was established to support engagement between the governments in the context of the Good Friday/Belfast Agreement – the British-Irish Council, the North-South Ministerial Council and the British-Irish Intergovernmental Conference, all deemed critical to cementing the peace process.²⁴ It is telling that the Labour government did not think it necessary to mirror the more formal structure of these institutions within the newly established JMC.

While the formal machinery for cross-governmental engagement was therefore under-developed in this period, a dense skein of relationships existed between officials nested in the various administrations, many of whom

were already habituated to consulting each other informally. These ties grew out of the close working relationships that existed between officials in Whitehall and the former territorial departments – most officials from the territorial departments transferred to the new devolved administrations. And through these linkages, various tensions and potential conflicts were mitigated, or headed off. In sum, they provided an important binding for the new system that was emerging.

However, to a considerable degree, the stability of this new system rested upon the contingent coincidence of Labour-led administrations in Westminster, Cardiff and Edinburgh. While there were at times notable disagreements over decisions taken by the devolved governments that were at some distance from UK Labour Party policy – for instance on university tuition fees and free personal care for the elderly – a sense of shared party interest ensured that difficult issues were, for the most part, resolved away from public view.²⁵

The interactions that developed among officials and politicians in these governments were primarily informal and bilateral in kind. The first generation of leaders of the devolved executives were former MPs who maintained close personal links with key figures in the London government. Relationships were often managed through Labour Party networks, including when there were differences of opinion between the party’s different territorial branches. The territorial Secretaries of State, who were typically experienced Scottish and Welsh Labour figures, were well-placed to

²² Institute for Government, ‘Devolution: Joint Ministerial Committee’, <https://www.instituteforgovernment.org.uk/explainers/devolution-joint-ministerial-committee>, last accessed 6 October 2020.

²³ Trench (2007c), pp. 160-198.

²⁴ J. Coakley, ‘British Irish Institutional Structures: Towards a New Relationship’, *Irish Political Studies* 29:1 (2014), pp. 76-97.

²⁵ Trench (2007c), pp. 163-165.

serve as conduits between the UK and devolved administrations. By contrast, there was little political incentive to raise contentious issues in the more formal setting of the JMC.²⁶

A sharp disagreement in 2001 over the financial implications of the Scottish Executive's policy of free personal care for the elderly was resolved through private meetings between key decision-makers.²⁷ Meanwhile, agreement on how to proceed with altering Wales' devolution arrangements, following the report of the Richard Commission which recommended increasing the Assembly's powers, was reached within Welsh Labour in advance of the 2005 general election, rather than through any official intergovernmental process.²⁸ A marked preference for informal relations with Northern Ireland's leaders was also apparent, after Blair and some of his leading advisers had forged strong personal relationships with the leading unionist and nationalist politicians who led the devolved Executive in Belfast through the process that led up to the Good Friday/Belfast Agreement.

As well as being informal in character, the relationships between the centre and these newly established administrations were almost entirely bilateral in kind. This was partly because most of the contentious issues that emerged during this period concerned the relationship between central government and one of these other governments, rather than the devolution system overall. But it also reflected a very established preference within Whitehall

and Westminster, neither of which felt impelled to consider whether new arrangements for governing the UK in the round needed to be explored.

The initial model of Welsh devolution required particularly close co-ordination between the UK government and the Welsh Executive, as devolved powers were conferred from Westminster in a piecemeal way. Reports suggested that the First Minister and the Secretary of State for Wales spoke to each other several times each week in the early 2000s.²⁹ By contrast, the model of devolution adopted in Scotland meant less need for close interaction between UK ministers and the Scottish Executive, as these arrangements reflected a clearer delineation between devolved and reserved responsibilities. In Northern Ireland, meanwhile, the pattern established in the run-up to the Good Friday/Belfast Agreement – of regular, close engagement by the UK Prime Minister with local political leaders – lasted until David Cameron decided to leave this brokerage role mainly to his Secretaries of State.³⁰

In the first decade of devolution, relations between the centre and these new administrations ran more smoothly than many had anticipated. The UK, Scottish and Welsh governments were led for most of these years by politicians from the same political party, who all held a broadly shared understanding of devolution and were reluctant to escalate any differences that arose into public disputes.

26 Trench (2007c), p. 164.

27 Trench (2007c), pp. 164-165.

28 M. Drakeford, 'Wales and a third term of New Labour: devolution and the development of difference', *Critical Social Policy* 25:4 (2005), pp. 497-506.

29 Trench (2007c), p. 175.

30 M. Kenny and J. Sheldon, 'A place apart', or integral to 'our precious Union'? Understanding the nature and implications of Conservative Party thinking about Northern Ireland, 2010-19', *Irish Political Studies* online advanced access (2020b).

A relatively benign fiscal and economic environment also contributed to these calm waters. In a period when spending by central government was rising overall, the devolved governments could rely on annually increasing budgets through the Barnett formula.

A question that arises now, with the considerable benefit of hindsight, is whether – having introduced these new institutions – those operating at the political centre became too disengaged from, and perhaps even complacent about, their wider implications. In the absence of a major source of conflict between the centre and the new devolved governments, the governance of the multi-level Union quickly fell down the UK government’s list of priorities. Few saw much need to develop intergovernmental structures fit for a more challenging context, as ultimately emerged from 2011 onwards, or to put much thought into how Westminster and Whitehall should perform their altered roles within the devolved context. Hence the often-repeated accusation that Whitehall’s preference was to ‘devolve and forget’.³¹

This pattern only began to change in any significant way following the third round of elections to the devolved legislatures in 2007. Then, the Scottish National Party (SNP) came to power for the first time, leading a minority government in Scotland, while Plaid Cymru became Labour’s coalition partner in Wales. The SNP’s ascent into government in Edinburgh was viewed in some quarters as the first major test for the system of devolved governance, as well as

being a highly significant event in its own right in Scottish politics. There was much discussion within Whitehall in this period about how relations among the different administrations would now be managed, and conflicts dealt with, after Alex Salmond was installed as the new First Minister.

The JMC machinery was revived at the start of Gordon Brown’s premiership, partly out of a recognition of the challenges arising from this changing political landscape.³² A new ‘Domestic’ format was introduced and annual plenary meetings resumed. However, despite widespread misgivings about the prospects for productive relationships between the UK and Scottish governments and various warnings about imminent conflict, the effect of the new Scottish government upon cross-governmental relations was initially ‘modest’.³³ There were a few points of overt disagreement, and various minor tensions, but the SNP’s position as the lead party in a minority government, and its leader’s decision to prioritise establishing the party’s reputation as a competent administration, ensured that it had little appetite to make constitutional questions especially salient or to pick fights with London. Focused primarily on the political negotiations and deals required to keep the government afloat in Holyrood, First Minister Alex Salmond lacked the political bandwidth and authority to take the constitutional fight to the UK government. At the time, many in Whitehall and Westminster viewed the outcome of the 2007 Scottish Parliamentary election as

31 Conservative Party, *Forward, Together: Our Plan for a Stronger Britain and a Prosperous Future* (London: Conservative Party, 2017), p. 31; K. Starmer, ‘Keir Starmer’s speech on a socially just Scotland in a modern United Kingdom’, Edinburgh, 21 December 2020, <https://labour.org.uk/press/keir-starmer-speech-on-a-socially-just-scotland-in-a-modern-united-kingdom/>, last accessed 15 February 2021.

32 Paun and Munro (2015), p. 64.

33 P. Cairney, ‘Intergovernmental Relations in Scotland: What was the SNP Effect?’, *British Journal of Politics and International Relations* 14:2 (2012), pp. 231–249; N. McEwen, W. Swenden and N. Bolleyer, ‘Intergovernmental Relations in the UK: Continuity in a Time of Change?’, *British Journal of Politics and International Relations* 14:2 (2012), p. 324.

an aberration, a temporary disruption to the normal pattern of Labour dominance of Scottish politics. This was, after all, an administration operating at the limits of credibility. With only one more seat than Labour, and only 47 seats out of the 129, some officials in the Scottish Executive of the time coined this the 'bumble bee government': it should not have been able to fly, but it did.³⁴

The general election of 2010 did not itself puncture this air of complacency. The SNP achieved a swing of only 2.3% in its favour and did not increase its seat share beyond the six it had won in 2005. Nor was there any hint of breakthrough for Plaid Cymru in Wales; the party failed to improve on its three seats, and its vote share dropped 1.3%. The eyes of the Conservative/Liberal Democrat coalition government that was formed, after intense negotiations, in 2010, were fixed elsewhere – on the continuing fall out of the financial and banking crises of 2007–08, the country's mounting deficit, and growing turmoil in the Eurozone.

In the complex interweaving of party manifestos that resulted in the coalition's programme for government, Scotland, Wales and Northern Ireland received only a cursory mention.³⁵ The commitments that were included were to pursue the outcome of the Calman Commission, which had reported in 2009 for Scotland; a promise to initiate something similar for Wales; and boiler plate language on the political process in Northern Ireland, with an additional

pledge to examine the case for changing the corporation tax rate. This was neither a programme of radical reform nor the stance of a government anticipating a crisis in its relations with the devolved parts of the UK.

The Scottish referendum and its aftermath, 2011-16

From 2011 onwards, the established *modus operandi* began to hit a number of bumps in the road. As a result, some of the more awkward questions about constitutional authority and political power which devolution posed started to percolate into the heartlands of British politics and government.

The primary catalyst for more troubled relations between the UK and the devolved governments was the outcome of the election to the Scottish Parliament in 2011, which resulted in a new, majority SNP administration and confirmed a rapid process of political decline for Labour north of the border. In an electoral system designed to dampen swings to any one party, and with no apparent upsurge in popular support for independence, few had foreseen the possibility of such a sweeping victory for a nationalist party. The vote was in part the political reward for the perceived efficacy of the first Salmond administration, and had the effect of forcing the constitutional question onto the political agenda.³⁶

34 Personal recollection by Rycroft.

35 UK Government, *The Coalition: our programme for government*, 2010, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf, last accessed 15 February 2021.

36 R. Johns, J. Mitchell and C. Carman, 'The Scottish National Party's success in winning an outright majority at Holyrood in May 2011 was an extraordinary result in an "ordinary" election. Research shows that Scots voters did not move further towards secession and independence', LSE Politics and Policy, 27 July 2011, <https://blogs.lse.ac.uk/politicsandpolicy/snp-scotland-victory/>, last accessed 2 February 2021.

In his response to Salmond's electoral victory, Prime Minister David Cameron immediately ceded the possibility of holding a referendum on Scotland's position within the UK.³⁷ His decision to do so was taken without much consideration of the options available to the coalition. It was striking too in that there was no legal necessity for the UK government to agree to the holding of a referendum. Legal advice from the Advocate General for Scotland, Lord (Jim) Wallace, confirmed – in the autumn of 2011 – that the Scottish government did not have the authority to hold one without the permission of the UK parliament.³⁸ However, Cameron believed that the SNP's mandate from the Holyrood election meant that it would be a major political risk not to agree swiftly to the referendum request.³⁹ His analysis was shared by his Liberal Democrat coalition partners – who held more Scottish seats and occupied the post of Secretary of State for Scotland – and who believed that agreeing to a referendum was democratically the right thing to do. Cameron saw an attractive political opportunity to halt the momentum of nationalism in Scotland, and exploit what he believed to be a degree of over-reach on the SNP's part. He took heart too from polling which showed that support for independence had never risen much above 30%.⁴⁰ However, in accepting so readily the case for a referendum, he created a challenge for which the machinery of Whitehall was distinctly unprepared.

It proved very difficult to ensure that the core structures of the administrative centre would consider relationships with the devolved parts

of the UK a central focus of governmental activity. Developing and disseminating a coherent strategic approach to the referendum was an uphill struggle. The Scotland and Wales Offices, which had lost many of their responsibilities and functions in the wake of devolution, were now the orphan children of Whitehall. They were relatively small departments which were loosely connected to the Office of the Deputy Prime Minister, had no permanent secretary support, and few means at their disposal to support their Secretaries of State within the internal politics of Whitehall. The Northern Ireland Office was also a shadow of its former self. Although more firmly integrated into parts of the Whitehall nexus, given the priority accorded to continuing concerns about security in Northern Ireland, it too was shorn of its own permanent secretary for a time by downgrading the head of department post to Director General level. The grip that the centre had on Northern Ireland issues through the period of the negotiation of the Good Friday/Belfast Agreement, and immediately afterwards, had weakened. (This diminution of Whitehall's previously strong institutional connection with Northern Ireland's politics had important consequences when it came to the Brexit negotiations.⁴¹) For three critical years, from 2011 to the middle of 2014, none of the territorial departments were present at the crucial weekly meetings of permanent secretaries.

Overall, the structures for co-ordinating Whitehall's approach to devolved issues remained rudimentary, and there was no single

37 BBC News, 'Scottish election: SNP majority for second term', 7 May 2011, <https://www.bbc.co.uk/news/uk-scotland-13319936>, last accessed 16 February 2021.

38 Interviews conducted by authors.

39 D. Cameron, *For the Record* (London: William Collins, 2019), p. 315.

40 Scottish Social Attitudes, *From Indyref1 to Indyref2? The State of Nationalism in Scotland* (Edinburgh: ScotCen, 2017), p. 2.

41 Kenny and Sheldon (2020b).

mechanism that could be employed to oblige departments to improve their capability in this area. Much of the central state had little ‘feel’ for politics outside England. Even after the holding of a referendum on independence was accepted by the UK government, for most of Whitehall Scotland continued to be a watching brief.

The initial focus of political concern following Cameron’s decision was the framing of the referendum question. His overriding goal was to ensure that it was ‘fair, legal and decisive’.⁴² The priority was to ensure that Alex Salmond accepted a single question, rather than having three options on the table – the *status quo*, independence or ‘devo-max’ (an ill-defined quasi-federal option) – as some had proposed. The UK government set out its proposed way forward in a consultation paper published in January 2012.⁴³ This recommended using a ‘section 30 order’ under the Scotland Act 1998 as the means to give the Scottish Parliament the authority to pass legislation to enable the holding of the referendum. In return for achieving a single question referendum, the UK government ceded a number of other points to its Scottish counterpart, including the crucial issue of timing, but also the determination of the franchise and the precise wording of the question (subject to sign off by the Electoral Commission).

Despite the emergence of a new, potentially existential threat to the Union, the UK

government saw no immediate need to depart from the modest steps to adjust the boundaries of the settlements that had been proposed in the Calman Commission report and subsequently enacted in the Scotland Act 2012, and the later Silk Commission report and Wales Act 2014.⁴⁴ These developments reflected a broad continuity of approach with the direction of travel set by the architects of devolution. In so far as it did reflect consciously on these issues, the coalition followed the accepted view at the centre of British politics that incremental devolution, and a constrained move towards granting limited tax-raising powers, would be sufficient to secure the consent of a majority in Scotland and Wales.

Broad continuity also characterised the coalition’s approach to the question of intergovernmental relations. The JMC continued to meet intermittently in its various formats. While this involved regular and relatively effective interactions in the European Committee, the rare plenary meetings of heads of government were largely tokenistic and the JMC(Domestic) also met infrequently.⁴⁵

Despite the high-level political focus given to the Scottish question, the wider machinery of government struggled to gear itself up to cope with the referendum campaign. The lack of a single institutional location at the centre for managing relations with the devolved parts of the UK was all too apparent at this time. The Scotland Office, in particular, was widely

42 Cameron (2019), p. 315.

43 UK Government, *Scotland’s constitutional future: A consultation on facilitating a fair, legal and decisive referendum on whether Scotland should leave the United Kingdom*, Cm 8203, January 2012.

44 Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century, Final Report*, June 2009, https://www.qmul.ac.uk/law/maccormick/media/maccormick/timeline/15_06_09_calman.pdf, last accessed 16 February 2021; Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, November 2012, <https://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/>, last accessed 16 February 2021.

45 Paun and Munro (2015).

viewed as too small, and lacking the necessary authority to take the lead on managing this issue. The internal politics of the coalition were also important here: Cameron could not allow an existential question about the future of the United Kingdom to be left in the hands of a department led by a Liberal Democrat. The institutional response within Whitehall instead involved an uncomfortable amalgam of teams and individuals from the Treasury, No 10, the Cabinet Office and the Scotland Office, corralled through a series of working groups organised by the Deputy Prime Minister's office, and given overall political direction by the Scotland Cabinet sub-committee. Buffeted by internal political pressures within the Whitehall machine, this arrangement unsurprisingly began to fray as the campaign wore on.

The stresses and strains associated with mounting a popular pro-Union campaign laid bare some of the institutional and political weaknesses of the British state's approach to territorial politics. There was now almost no network of groups and bodies in Scotland upon which the state could rely for intelligence about the changing mood on the ground, or to articulate its preferred messages in effective ways. Nor was there an agreed narrative about the benefits of the Union. This had to be pulled together in a hurry in the face of a 'Yes' campaign that was gathering increasing momentum. A Conservative-led UK government was not well placed to appeal to the key swing voters who were, mostly, current or former Labour supporters. The intention was for the UK government to focus on assembling the empirical evidence that could be marshalled in support of the case against independence, leaving the more affective and emotive

campaigning to be led by the cross-party *Better Together* campaign.

There was a whirl of activity relating to the referendum in and around the centre of government during the course of the campaign, but this focus engaged only a tiny proportion of Whitehall officials and, until close to the end, only a small part of Westminster's political attention. For most central state departments, business carried on much as usual, with small teams delegated to represent their interests in the cross-cutting group that was set up to lead the response in Whitehall. Departments contributed to the 15 documents that made up the *Scotland Analysis* series – a series of papers that set out the benefits of the UK Union across various policy areas, and which were published from February 2013 through to June 2014.⁴⁶ Departments were badgered to manage their own communications and announcements in ways that were sensitive to Scottish interests, and to send a minister on an occasional foray north of the border. But, for the most part, ministers and central government departments were no more visible in Scotland than in normal times – a striking reflection of the inability of the centre to make even an existential threat to its territorial integrity its main strategic priority, as well as to some extent a tactical recognition of the limited political appeal of UK ministers in a campaign context north of the border.

As *Better Together* struggled to make its mark on the ground in Scotland, the UK government was drawn into communicating directly with the Scottish public during the later stages of the campaign. A series of direct communications, including two leaflets sent to every household, were intended to fill the gap. Increasingly frequent polling was commissioned – on a daily

46 UK Government, 'Scotland analysis', <https://www.gov.uk/government/collections/scotland-analysis>, last accessed 16 February 2021.

basis by the last weeks of the campaign – in a belated attempt to bring real-time intelligence into the UK government. With concern growing about the effectiveness of the campaign it was sponsoring, in April 2014 the most senior Scottish figure in the cabinet, Chief Secretary to the Treasury Danny Alexander, took direct charge of the UK government's day-to-day engagement with *Better Together*. Since Alexander was one of the four members of the 'quad', alongside Cameron, Nick Clegg and George Osborne – and thus at the effective centre of political decision-making in the coalition – this did much to ensure that the campaign got the attention it needed at the very top of the administration.

It was clear that the polls were narrowing in the last frenetic weeks of the campaign. Political excitement reached fever pitch when a poll published in *The Sunday Times* on 7 September 2014 for the first time showed 'Yes' in front on 51%. That propelled the three UK party leaders north, to campaign in Scotland rather than attend Prime Minister's Questions in Westminster, and consolidated cross-party commitment to a substantive post-referendum devolution offer for Scotland. The 'vow', signed by the three UK party leaders, and published in *The Daily Record* two days before the referendum was held, promised a rapid process to deliver new devolved powers to Scotland, as well as the continuation of the Barnett funding formula, and reaffirmed that funding for the

NHS in Scotland was a matter for the Scottish government.⁴⁷

While this offer probably made little difference to the overall outcome of the referendum, it set off a wider chain reaction of constitutional change in its wake.⁴⁸ The process of delivering on the 'vow' was instigated the day after the referendum, following cross-party agreement at Westminster to develop further devolution for Scotland. Cameron and his party were acutely concerned about English reactions to the offer of more powers for Scotland, and wary of the ability of UKIP to harness resentments among some groups of voters south of the border. This worry lay behind his dramatic announcement, on the morning after the referendum, of a commitment to answer the West Lothian question, and to give the people of England a clearer sense of voice within the system of British government.⁴⁹

This move had not been discussed with his coalition partners, although it had been widely anticipated at Westminster that such an announcement was in the offing. It restored a sharp, partisan dynamic on these issues to Britain's main political parties, which had worked together in an uneasy alliance during the campaign. It was seen by some unionists as an opportunist move that took the moral shine off the referendum result, and others as an overdue recognition that English consent for the post-devolved Union could no longer be taken for granted.⁵⁰

47 D. Clegg, 'David Cameron, Ed Miliband and Nick Clegg sign joint historic promise which guarantees more devolved powers for Scotland and protection of NHS if we vote NO', *Daily Record*, 15 September 2014, <https://www.dailyrecord.co.uk/news/politics/david-cameron-ed-miliband-nick-4265992>, last accessed 16 February 2021.

48 C. Jeffery, 'The United Kingdom and the Scottish Referendum', in R. Heffernan et al (eds), *Developments in British Politics Ten* (Basingstoke: Palgrave Macmillan, 2016), p.252.

49 D. Cameron, 'Scottish Independence Referendum: statement by the Prime Minister', 19 September 2014, <https://www.gov.uk/government/news/scottish-independence-referendum-statement-by-the-prime-minister>, last accessed 16 February 2021.

50 M. Kenny, 'The "Politicisation" of Englishness: Towards a Framework for Political Analysis', *Political Studies Review* 14:3 (2016), pp. 325-334.

This was only one part of a wider process of constitutional tinkering triggered by the Scottish poll. Even though the ink on the Wales Act 2014 was barely dry, there was concern in the UK government, led by Welsh Secretary Stephen Crabb, that Wales could not once again be seen to be left behind as Scotland advanced to take on more devolved powers. Through the St David's Day 'Agreement' (more a statement of coalition government policy than a formal cross-governmental accord), the UK government committed to address the majority of the recommendations of the second Silk report, which had been published in March 2014.⁵¹ Importantly, the government's commitments included turning the Welsh devolution settlement into a reserved powers model, like Scotland's, and introducing a funding 'floor' to protect spending levels in Wales under the Barnett formula. The incoming Conservative government in 2015 stuck with these commitments, which were delivered through the Wales Act 2017. For Northern Ireland, as ever facing its own distinctive challenges, the commitment to extend the existing settlement resulted in a new pledge to devolve corporation tax in order that the tax rate could be reduced to the lower, more business-friendly level that applied in the Republic.

Considered in the round, these measures reflected a growing imperative to seek to rebind the Union on new terms in the wake of the shock administered by the prospect of

losing the Scottish vote. They also throw into relief the enduring impact of the British state's difficulties in developing a strategic, joined-up approach to the polity as a whole. Each devolved territory was managed in a distinct and separate way. And, even in the teeth of the existential threat that crystallised during the referendum campaign, the UK's governing parties stayed firmly within the established pattern of dealing with devolved governments – seeking to undercut the appeal of nationalism through the award of some additional powers rather than contemplating a more fundamental change in the relationship with the central state itself.

The responsibility for delivering the promises set out in the 'vow' was entrusted to an all-party commission led by Lord Smith of Kelvin. Both the SNP and the Scottish Greens agreed to take part, along with the three main British political parties, recognising that they could not credibly remain outside a process designed to deliver further devolution to Scotland. The proposals it put forward were at the more expansive end of the ideas that had been developed by the main UK parties earlier in the year, and included the devolution of income tax, as well as some elements of welfare, and the recognition of the permanence of the Scottish Parliament in statute.⁵² The unionist argument for these proposals was that the granting of serious tax-raising powers, together with the devolution of additional responsibilities for welfare, would make the Scottish Parliament focus harder on such questions and possibly divert nationalist

51 UK Government, *Powers For a Purpose: Towards a Lasting Devolution Settlement for Wales*, Cm 9020, February 2015; Commission on Devolution in Wales, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, March 2014, <https://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/>, last accessed 16 February 2021.

52 The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, November 2014, https://webarchive.nationalarchives.gov.uk/20151202171029/http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf, last accessed 16 February 2021.

politicians from the overriding focus upon the constitutional question.⁵³ In this, and other, respects the thinking informing the Smith Commission proposals remained firmly within the trajectory established by the New Labour architects of devolution; its proposals were entirely focused on Scotland, not their implications for the central state.

The Smith process went forward with little or no reference to the implications for Wales. The familiar *ad hoc* approach to constitutional reform was apparent too in the proposals to deliver the St David's Day Agreement. Designing legislation that the Cardiff government could accept proved to be a challenging process. Despite having lost a case in the Supreme Court in 2014 on the power of the National Assembly for Wales to regulate agricultural wages – an episode which had shone a light on the ambiguities in the conferred powers model of devolution – the UK government insisted that changes to criminal and private law should be subject to a 'necessity test'.⁵⁴ This additional hurdle was an attempt by the Ministry of Justice and Home Office to narrow the scope for the Senedd to change the law in Wales in a way that might impact on the common English and Welsh legal system. First Minister Carwyn Jones was adamant that he would not accept the bill on that basis and the necessity test was dropped in the second version of the bill, which was

introduced in June 2016.⁵⁵ The strains which this episode placed upon relations between devolved government and Whitehall were, in retrospect, something of a dry run for some of the tensions and difficulties that followed the Brexit referendum.

In Northern Ireland too, the UK government was also active after 2014, but a rather different dynamic was, as ever, in play there. Cameron sought to inject a more avowedly pro-Union tone into the government's approach to Northern Ireland and to extend policies introduced elsewhere in Britain to that territory.⁵⁶ However, after a period of relative stability, by 2014 a series of controversial issues such as parading, the display of Union flags, the legacy of the Troubles, and welfare reform had brought the Executive to the brink of the collapse. An intensive series of cross-party talks aimed at resolving these issues, chaired by the Secretary of State for Northern Ireland, Theresa Villiers, eventually led to the Stormont House Agreement of December 2014.⁵⁷ This was followed by the Fresh Start Agreement the following year.⁵⁸ Both included a commitment to the devolution of corporation tax – a controversial move for which Villiers' predecessor, Owen Paterson, had campaigned, on the basis that it could promote private investment into a local economy dominated by the public sector. Plans for its introduction

53 Scottish Conservatives, *Commission on the Future Governance of Scotland*, May 2014, https://www.scottishconservatives.com/wordpress/wp-content/uploads/2014/06/Strathclyde_Commission_14.pdf, last accessed 30 March 2021.

54 Wales Governance Centre and Constitution Unit, *Challenge and Opportunity: The Draft Wales Bill 2016* (Cardiff: Wales Governance Centre, 2016).

55 A. Cogbill, 'The Wales Bill 2016: a marked improvement but there are fundamental issues yet to be resolved', Constitution Unit blog, 26 July 2016, <https://constitution-unit.com/2016/07/26/the-wales-bill-2016-a-marked-improvement-but-there-are-fundamental-questions-yet-to-be-resolved/>, last accessed 16 February 2021.

56 Kenny and Sheldon (2020b).

57 UK Government, 'The Stormont House Agreement', December 2014, <https://www.gov.uk/government/publications/the-stormont-house-agreement>, last accessed 16 February 2021.

58 UK Government, *A Fresh Start: The Stormont Agreement and Implementation Plan*, November 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf, last accessed 16 February 2021.

were, however, disrupted by the collapse of the Northern Ireland Executive in 2017. Further tweaks to devolution arrangements were implemented by the coalition and Conservative governments, such as reducing the size of the Assembly from 108 to 90 members, and providing for a formal opposition at Stormont.

Aside from these bilateral changes to the devolution settlements in this period, there was an important attempt to breathe new life into intergovernmental relations in the wake of the Scottish referendum. The UK government – first under Cameron, and then under May – came very close to overseeing an agreement for a more robust and transparent system to bring the different governments together on a more regular basis.

Ministers from all four governments agreed at the plenary meeting of the Joint Ministerial Committee in December 2014 to review the Memorandum of Understanding that underpinned the functioning of formal intergovernmental relations.⁵⁹ No timetable for this process was set, and no clear parameters laid down, with officials left to figure out a way forward. Starting from a pragmatic assessment of what each of the four governments might be prepared to accept, the official process focused on a series of practical propositions aimed at improving the functioning of the JMC. This took some learning from the institutions set up to support the Good Friday/Belfast Agreement, in particular the British Irish Council. In its modest way, this body had proved quite effective at supporting cross-government work and provided an example of how summitry could be combined with less formal engagement

in the margins of the main event as a way to build political relationships.⁶⁰

The proposals that came out of this review were fairly modest in scope, but they pointed the way towards the possibility of converting the JMC into a more meaningful and important forum for collective discussion across the different administrations. They included: regularising the timetable for the holding of JMC plenary meetings; rotating the venue where it was held; allowing for the commissioning of joint work to report back to the JMC; and providing the opportunity for more informal discussions between ministers.⁶¹ It also sought to clarify respective roles and responsibilities in relation to overseas visits by ministers from the devolved governments. This was often a vexed issue due to the tension between the expectation of devolved ministers to receive support for their overseas engagements from the UK government, usually the Foreign Office, and their occasional reluctance to toe the UK government line in their interaction with foreign governments.

This suite of reforms of the JMC was the focus of a series of bilateral discussions between UK and devolved ministers in the course of 2016, and was due for approval at Prime Minister May's first JMC plenary meeting in October. However, they were vetoed at the very last moment by Sinn Féin's Martin McGuinness, who objected to the proposal that, in return for UK government support for their overseas visits, ministers from the devolved administrations should respect the UK government line in their discussions with other governments.

59 UK Government, 'Joint Ministerial Committee communiqué: December 2014', 15 December 2014, <https://www.gov.uk/government/news/joint-ministerial-committee-communique-december-2014>, last accessed 16 February 2021.

60 Coakley (2014).

61 Personal recollection by Rycroft, and interviews conducted by authors.

These proposals for reforming the JMC were modest in nature. They would not have placed it on a statutory footing or turned it into a forum for joint decision-making, as has been recommended by some observers.⁶² Nevertheless, the near achievement of a more functional and transparent system of intergovernmental relations (IGR) at this juncture is an important – if little known – moment in the increasingly choppy history of territorial politics in Britain. This agreement came close to creating an opportunity to expand the scope of the official JMC mechanisms just as the need for a robust intergovernmental forum – which would have enabled sustained ministerial interaction – was to become especially imperative in the context of Brexit.

Overall, the Scottish independence vote, and the primarily tactical – rather than strategic – manner in which leading political and administrative actors at the centre responded to it, laid bare the absence of a deep and strategic capability within British government in the field of territorial relations. This traumatic experience did engender some realisation, especially after the sweeping victory of the SNP in the 2015 election, that these weaknesses needed to be addressed. But the response that followed, overseen by Cabinet Secretary Jeremy Heywood and agreed by Cameron, was more piecemeal tinkering, not wholesale change, involving a fairly limited consolidation of the teams that had supported the constitutional agenda of the Deputy Prime Minister into the UK Governance Group. This was led by a Second Permanent Secretary in the Cabinet Office, reporting directly to the Cabinet Secretary and – for the first time since devolution was

introduced – gave the Scotland and Wales Offices, as well as the broader constitutional and devolution agenda, a voice around the permanent secretary table.

Rather typically, this new arrangement was itself *ad hoc*. The Northern Ireland Office was not included in the new group, largely because it had, by then, returned to having a permanent secretary of its own. The Constitution Group in the Cabinet Office, the Scotland and Wales Offices, and the Office of the Advocate General for Scotland – which were all parts of the newly established UK Governance Group – retained their own separate political leadership and external identities. Following its creation, the latter three acquired the heft of the Cabinet Office in the corridors of Whitehall, and its collective leadership was able to sustain a more coherent set of roles for those interested in building expertise in constitutional and devolution issues.

One of the major challenges for the newly established UK Governance Group was to confront the relative ignorance of, and considerable indifference towards, devolution right across Whitehall. Very few officials understood how these reforms had altered the nature of power relations within the UK, and few ministers were inclined to accord the Union political priority even after the shock of the Scottish referendum. The group made some headway, devising a structured plan that required departments to produce devolution plans and report on them to the Cabinet Secretary. Meanwhile, a new programme of learning, ‘Devolution and You’, sought to permeate devolution consciousness into the wider training that was

62 N. McEwen, M. Kenny, J. Sheldon and C. Brown Swan, *Reforming Intergovernmental Relations in the United Kingdom* (Edinburgh: Centre on Constitutional Change, 2018).

being offered in Whitehall.⁶³ Yet, progress in broadening understanding of the political and policy realities of the UK's evolving system of territorial government was fairly slow.

The UK Governance Group oversaw the constitutional changes – Scotland Act, Wales Act, EVEL – which the UK government hoped would stabilise the devolution settlements in the longer term. There were other important moves too – for instance, the Cabinet Office adopting as its primary objective maintaining the integrity of the UK.⁶⁴ However, none of this progress was sufficient to achieve the step-change in understanding and culture that was required to deal with the immense pressures on the Union unleashed by the vote to leave the EU. There were still occasions when Whitehall failed to appreciate the knock-on effects of decisions made at the centre for the devolved territories. A fairly recent example was a decision during the coronavirus pandemic in 2020 to temporarily cap the number of English students that could enrol at universities, including in Northern Ireland, Scotland and Wales where higher education is devolved.⁶⁵ This move engendered an angry response from ministers in all three of the devolved governments, all of who appeared to have been taken by surprise by the announcement.

On a day-to-day basis, Whitehall departments continued to interact with their devolved counterparts as good administrative order required. Where the interface was close, for example on agriculture and fisheries and

some aspects of transport, co-operation could be effective. But for most departments, dealing with devolution was one among many subsidiary objectives, and never a main strategic goal. Even without the advent of Brexit, turning round the culture in Whitehall in this area was an uphill struggle. Following the referendum of June 2016, there was little chance of it being accorded the priority it deserved.

Prior to the EU poll, the Cameron government was on track to deliver the suite of changes triggered by the 'vow'. The Scotland Act 2016 had become law. Changes to standing orders had introduced a new system – 'English Votes for English Laws' – into the House of Commons, and the considerable controversy that this generated dissipated fairly quickly.⁶⁶ The Wales Bill was making its convoluted way through parliament. Plans had been laid for further reforms of the JMC, and Whitehall had taken tentative steps to improve the way in which devolution issues were managed. Each of these elements was devised in relation to different territorial challenges, and a wider sense of strategic oversight of the entire constitutional settlement remained largely absent.

There were some overarching, animating themes connecting these reforms, and they reflected a semi-conscious desire within the coalition to 'complete' the devolution model that Blair had begun, and to try to put the Union on a more stable footing after 2014. However, some of the tensions and difficult questions – in both constitutional and political terms – raised by

63 P. Rycroft and R. Barnes, 'Devolution and you', 29 July 2015, <https://civilservice.blog.gov.uk/2015/07/29/devolution-and-you/>, last accessed 16 February 2021.

64 Cabinet Office, 'Cabinet Office single departmental plan', May 2018, <https://www.gov.uk/government/publications/cabinet-office-single-departmental-plan/cabinet-office-single-departmental-plan--2>, last accessed 16 February 2021.

65 BBC News, 'Row over cap on English students at Scottish universities', 2 June 2020, <https://www.bbc.co.uk/news/uk-scotland-52884134>, last accessed 16 February 2021.

66 D. Gover and M. Kenny, *Finding the Good in EVEL: An evaluation of 'English Votes for English Laws' in the House of Commons* (Edinburgh: Centre on Constitutional Change, 2016).

the introduction and early years of devolution were now much harder to contain. Above all, sovereignty still rested formally at Westminster, even as the people of Scotland asserted their own, as they made their defining choice on 18 September 2014. And it was now apparent that the artful ambiguity cultivated during the early phase of devolution about where sovereign authority sat within the devolved Union was becoming increasingly untenable. In the context of the successive crises associated with first Brexit and, latterly, the coronavirus pandemic, the nature and implications of these two clashing constitutional ideas became more apparent still.

The coalition's main instinct was to keep these issues at the margins of political life, and to avoid turning the 2014 referendum into a wider constitutional moment. It rejected calls from the opposition and others for some kind of constitutional convention, which had become widespread in the lead-up to the 2015 general election.⁶⁷ It hoped that the focus of Scottish politics might move away from the constitution towards more conventional concerns, and was encouraged that this might come about by the result of the Scottish Parliament election of May 2016, in which the SNP lost its outright majority and the Scottish Conservatives made significant gains. But this situation was short-lived. The outcome of the EU referendum and its divisive political aftermath put relations between the devolved governments and the centre on a much more conflictual footing and, from June 2016 onwards, the prospects of the UK's own Union became tangled up with its attempts to leave the European one.

The Union under pressure, 2016-20

Brexit

The referendum held in June 2016 on the UK's membership of the EU detonated a major constitutional explosion underneath a system of territorial governance that was already fractured, and provided the biggest test yet for the model of asymmetrical devolution. Both the Scottish and Welsh governments were strongly opposed to Brexit. In Northern Ireland, the Democratic Unionist Party (DUP) was the only major political party in favour of it. The outcome of the poll gave political nationalists in Scotland and Northern Ireland powerful new arguments in support of Scottish independence and Irish unification. The morning after the EU referendum, Nicola Sturgeon argued that the outcome represented a 'significant and material change' from the circumstances in which Scotland voted in 2014 and, on this basis, called for a second vote on independence.⁶⁸ Given both the existential nature of the questions it posed about the UK's relationship with its former European partners, and the extent of the upheaval for the British state, Brexit came to dominate all other aspects of cross-governmental relations within the UK. Few of the multiple relationships which had grown up – both formally and informally – between these administrations were left untouched by it.

The May administration initially sought to rely on the existing machinery of intergovernmental relations to incorporate the devolved governments within a joint response to Brexit. The JMC plenary meeting on 24 October 2016, while failing to agree changes to the structure

67 A. Renwick, *After the Referendum: Options for a Constitutional Convention* (London: Constitution Society, 2014).

68 BBC News, 'Brexit vote: Nicola Sturgeon statement in full', <https://www.bbc.co.uk/news/uk-scotland-36620375>, last accessed 24 June 2016.

of intergovernmental relations more generally, did agree to a new sub-committee – JMC (European Negotiations) – with expansive terms of reference, which included commitments ‘to seek to agree a UK approach’ and provide ‘oversight of the negotiations with the EU’.⁶⁹ This language was negotiated by officials from the four governments and signed off by ministers in all four. But in the weeks that followed, the UK government never came close to offering the kind of engagement and access that might have allowed it to demonstrate that it was attempting to meet the aspirations of the devolved governments in any meaningful way. Over time, without the buttress of functioning relationships between the leaders of the four governments, this wording came to look increasingly hollow.

The failure of this strategy may well have been an inevitable result of the distance between these different governments over the UK’s post-Brexit policy choices. In its paper *Scotland’s Place in Europe*, which it published in December 2016, the Scottish government argued that the UK should stay in the Single Market and Customs Union.⁷⁰ The Welsh government likewise argued in January 2017 for ‘full and unfettered access to the Single Market’.⁷¹ Northern Ireland’s voice at this time was significantly muted, due to the political crisis that beset the Executive in late

2016 which resulted in there being no devolved ministers there from January 2017 until January 2020.

In her Lancaster House speech of 17 January 2017, Prime Minister May promised ‘to strengthen the precious union between the four nations of the United Kingdom’, but also to leave both the Single Market and Customs Union.⁷² Nicola Sturgeon immediately castigated the speech as a plan that would be ‘economically catastrophic’.⁷³ The prospect of a cross-UK approach on the big policy questions which Brexit posed for the UK was effectively dead from this point onwards.

By the time the UK government tabled its Article 50 letter to the European Commission on 29 March 2017 – having only shown the devolved governments its contents just before its delivery – the JMC(EN) had held four meetings, and the Welsh and Scottish governments were already vocal in their criticisms of its workings. In a speech to the Scottish Parliament on 15 March 2017, Mike Russell, Scotland’s Minister for EU negotiations complained that:

The JMC European Negotiations (EN) agenda is meant to be set and shaped by officials from all the administrations but there have been endless delays, papers have been provided late, and discussion

69 UK Government, ‘Joint Ministerial Committee Communiqué: 24 October 2016’, <https://www.gov.uk/government/publications/joint-ministerial-committee-communication-24-october-2016>, last accessed 16 February 2021.

70 Scottish Government, *Scotland’s Place in Europe*, December 2016, <https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2016/12/scotlands-place-europe/documents/00512073-pdf/00512073-pdf/govscot%3Adocument/00512073.pdf?forceDownload=true>, last accessed 16 February 2021.

71 Welsh Government, *Securing Wales’ Future: Transition from the European Union to a new relationship with Europe*, January 2017, https://gov.wales/sites/default/files/2017-01/30683%20Securing%20Wales%20Future_ENGLISH_WEB.pdf, p. 4, last accessed 16 February 2021.

72 T. May, ‘The government’s negotiating objectives for leaving the EU’, speech at Lancaster House, 17 January 2017, <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>, last accessed 16 February 2021.

73 A. Asthana, H. Stewart and J. Elgot, ‘Brexit: May’s threat to Europe: “no deal for Britain is better than a bad deal”’, *The Guardian*, 18 January 2017, <https://www.theguardian.com/politics/2017/jan/17/prime-minister-vows-to-put-final-brexit-deal-before-parliament>, last accessed 16 February 2021.

of key strategic choices have been left off the agenda and work plan, which we thought we had all said should appear.⁷⁴

Mark Drakeford, then responsible in the Welsh government for Brexit, was equally scathing. In his evidence to the House of Commons Exiting the European Union Committee, he complained that ‘St Fagans Community Council, in my constituency, would be better organised than most JMC meetings have been’.⁷⁵ It was not until 16 October 2017 that the JMC(EN) met again. By then, due to the collapse of the Executive earlier the year, Northern Ireland was represented by officials rather than elected politicians.⁷⁶ This meant, not least, that in the absence of the DUP, there was no devolved voice at the table in support of Brexit.

Why was there such a mismatch between Prime Minister May’s repeated commitments to the importance of ‘our precious Union’ and the inability in the early aftermath of the Brexit vote to attempt, with any real seriousness, a cross-UK approach? Sharp policy differences over the UK’s post-Brexit future were clearly a major contributing factor. There was little prospect of closing the gap easily between such different preferences. At the same time, this episode also threw into relief the dearth of experience among this generation of UK ministers and senior officials in dealing with the devolved governments. Engagement between Whitehall and the latter on major questions of shared interest had been largely perfunctory since

devolution was introduced, and the Brexit challenge exposed the shallowness of the intergovernmental processes that had grown up.

Relations deteriorated further over the legislation required to execute the UK’s withdrawal from the EU. The judgement offered by the Supreme Court in the iconic *Miller* case, in January 2017, reflected the enduring primacy of the doctrine of parliamentary sovereignty and rejected the notion that conventions, whatever their political force, had a legal basis.⁷⁷ This confirmed in particular that the Sewel convention – the practice whereby the UK government did not usually legislate on devolved matters without the consent of the devolved legislatures – was not legally binding. And the ‘not normally’ caveat in the relevant clause of the Scotland Act 2016 meant what it said; if the UK government deemed the circumstances *not* to be normal, then the UK parliament could override the refusal of a legislative consent motion by any of the devolved legislatures.⁷⁸

The significance of this point was brought home during the fraught passage of the European Union (Withdrawal) Act – the legislation that repealed the European Communities Act 1972, and paved the way for the UK’s formal extrication from the European legal order. Both the Scottish and Welsh governments were strongly opposed to the bill that was introduced to the Westminster parliament in October 2017,

74 M. Russell, ‘Scotland’s future relationship with EU: ministerial statement’, 15 March 2017, <https://www.gov.scot/publications/scotlands-future-relationship-with-eu-ministerial-statement/>, last accessed 8 March 2021.

75 R. Minto, ‘EU referendum: one year on – Wales and Brexit’, 27 June 2017, <https://ukandeu.ac.uk/eu-referendum-one-year-on-wales-and-brexite/>, last accessed 8 March 2021.

76 J. Sargeant and J. Rutter, *Governing without ministers: Northern Ireland since the fall of the power-sharing executive* (London: Institute for Government, 2019).

77 R. Craig, ‘Miller Supreme Court Summary’, <https://ukconstitutionallaw.org/2017/01/26/robert-craig-miller-supreme-court-case-summary/>, last accessed 16 February 2021.

78 Scotland Act 2016, s. 2.

which sought to ‘freeze’ the powers that would otherwise flow to the devolved legislatures as the UK left the EU. The rationale for this was to preserve the stability of cross-UK law until such time as the respective governments could agree a way forward that would protect the integrity of the UK’s internal market. In so doing, central government underestimated the opposition this would invite from the devolved governments, already bruised by their seeming exclusion from any meaningful dialogue over the exit process. The Scottish and Welsh governments were incensed at the UK government’s apparent willingness to override their rights to legislate in areas that they considered to be devolved responsibilities, and attacked this move as a ‘naked power-grab’ by the British state.⁷⁹ The UK government’s overriding motivation stemmed from its concerns about the domestic economy after Brexit but its stance was easily portrayed by the devolved governments as unreasonable. The conflict this triggered threw into sharp relief incompatible views about the status of devolved competences in the constitutional order.

Under pressure in the House of Lords – which accepted the validity of a good deal of this criticism – the May government sought to negotiate a solution that would secure the passing of legislative consent motions for the Withdrawal Bill in the Scottish Parliament and the Senedd. Amendments introduced in the Lords ensured that powers were devolved by default.⁸⁰ The general freeze was turned into

the power to effect a specific one (a power that has not to date been used). This, and the commitment to a new process to agree ‘common frameworks’ between the governments, were sufficient to placate the Senedd, which duly passed a legislative consent motion. The Scottish Parliament refused to do the same – meaning that the European Union (Withdrawal) Act became the first of several pieces of Brexit-related legislation to be passed without the consent of at least one of the devolved legislatures, where this would normally be required. The Commons debate on the compromise agreed in the Lords lasted just 20 minutes, as most of the allocated time was taken up by votes on other matters, which provoked a furious response from the SNP and exposed the absence of appropriate procedures for engaging with matters relating to territorial governance at Westminster.⁸¹

The deal that the returning May government opted to strike with the DUP, after the June 2017 election, was also a contributing factor to the deteriorating relations between the UK government and its Scottish and Welsh counterparts. Apart from the concern that this pact gave undue influence to only one of the political parties in Northern Ireland, the Scottish and Welsh governments argued that the largesse promised by the UK government to Northern Ireland as part of the deal – around £1 billion – should be regarded as part of the overall financial settlement for the devolved parts of the UK, with proportionate sums

79 Scottish Government and Welsh Government, ‘Joint Statement from First Ministers of Wales and Scotland in reaction to the EU (Withdrawal) Bill’, 13 July 2017, <https://gov.wales/joint-statement-first-ministers-wales-and-scotland-reaction-eu-withdrawal-bill>, last accessed 16 February 2021.

80 J. Sheldon and M. Kenny, ‘The UK-Welsh agreement on devolved powers, and why it matters for the UK as a whole’, Centre on Constitutional Change, 3 May 2018, <https://www.centreonconstitutionalchange.ac.uk/opinions/uk-welsh-agreement-brexite-and-devolved-powers-and-why-it-matters-uk-whole>, last accessed 16 February 2021.

81 BBC News, ‘SNP MPs walk out of PMQs in “Brexit power grab” protest’, 13 June 2018, <https://www.bbc.co.uk/news/uk-politics-44467306>, last accessed 8 March 2021.

being allocated to Scotland and Wales.⁸²

The UK government refused these requests, arguing that this was specific expenditure to address particular needs, which therefore lay outside the Barnett territorial funding process. The devolved governments' demand was symbolically powerful, if technically disputable. But the political spectacle of the British state apparently bending over backwards to meet the fiscal demands of a territorial party that now enjoyed considerable political influence, as a result of the outcome of an election that many saw as unnecessary did much to sour relations in this period.

These remained at a very low ebb throughout 2017 and 2018, as the devolved governments continued to press for closer engagement in the negotiations on the UK's exit from the EU. The prospect of a seat at the table during the negotiations was always unlikely, both due to the structure of decision-making within the UK government, and the perceived need for secrecy about its negotiating intentions. At times, there were off-line briefings for officials on an 'in confidence' basis and updates by UK government ministers at meetings of JMC(EN) when they resumed from October 2017.⁸³ But these were focused upon the transmission of information, not engagement in the formulation of negotiating lines.

Beneath the surface of this political standoff, both the UK and devolved administrations recognised that, in some important respects,

collaboration – however difficult – was required for administrative reasons in order to manage the consequences of Brexit. As a result, throughout 2018 a good deal of quiet engagement between officials, building upon a bevy of pre-existing informal contacts, took place, particularly in relation to the need to co-operate in developing plans to deal with the consequences of a 'no deal' Brexit. Whitehall gradually opened up the detailed information about its own planning to the Scottish and Welsh governments and, in the absence of an Executive, the Northern Ireland Civil Service. These unseen, and largely unreported, collaborative preparations were vitally important in establishing some administrative planning for this outcome, and straddled a range of devolved and reserved policy areas.⁸⁴

In the summer and early autumn of 2018, the UK government published over 100 technical notices, setting out in considerable detail its plans for a 'no deal' departure from the EU.⁸⁵ The preparation of these plans involved close working with official counterparts in the devolved governments. By this point, ministers from the Scottish and Welsh governments, and officials from Northern Ireland, were being invited on a regular basis to meetings of the European Exit and Trade (Domestic Preparedness, Legislation and Devolution) cabinet sub-committee, and their officials to its civil service equivalent. While ministers from the devolved governments could, and did, use

82 A. Asthana, H. McDonald and S. Carrell, 'Theresa May faces backlash from Scotland and Wales over £1bn Tory-DUP deal', *The Guardian*, 27 June 2017, <https://www.theguardian.com/politics/2017/jun/26/tories-and-the-dup-reach-deal-to-prop-up-minority-government>, last accessed 16 February 2021.

83 UK Government, 'Communiqués from the Joint Ministerial Committee (EU Negotiations)', <https://www.gov.uk/government/collections/communiques-from-the-joint-ministerial-committee-eu-negotiations>, last accessed 16 February 2021.

84 A. Paun et al., *No Deal Brexit and the Union* (London: Institute for Government, 2019).

85 UK Government, 'UK government's preparations for a "no deal" scenario', <https://www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario/uk-governments-preparations-for-a-no-deal-scenario>, last accessed 16 February 2021.

the sub-committee to express dissatisfaction with the general direction of central government policy, this was at least a forum in which candid views could be exchanged about what was required for effective planning for the ‘no deal’ scenario, and agreement sought about where the main logistical risks lay. At the same time, enough trust had been built to allow the extensive sharing of draft clauses on the European Union (Withdrawal Agreement) Bill with the devolved governments, as well as close joint working where required to ensure that the statute books in these parts of the UK, as well as at Westminster, would be fit for purpose in the event of a ‘no deal’ outcome.⁸⁶ The controversy over the Withdrawal Bill had also given way to a more collaborative approach to deal with possible disruption of the UK internal market by the creation of ‘common frameworks’, which aimed to achieve a consistent approach to policies with potential cross-border spill over impacts.⁸⁷

This extended episode of more functional, informal collaboration highlights one of the enduring paradoxes of intergovernmental relations in the UK context during the extended Brexit crisis. While there were clear political incentives for the devolved governments to express and demonstrate their disagreement with the May government’s approach to the mandate supplied by the referendum, the requirements of good administrative order at times impelled these different partners to co-

operate, even if on occasions through gritted teeth. As we document below, a rather similar pattern has re-emerged in the context of the coronavirus pandemic.

As May struggled to win support for her deal during the intense parliamentary impasse of 2018-19, she gradually came to recognise the potential advantage of broadening the circle of those who were brought closer to the development and articulation of the UK’s negotiating strategy.⁸⁸ There was extensive discussion within the UK government about the possibility of providing a more meaningful engagement for the devolved administrations in the negotiations over the future relationship, alongside parliament and the business community, but this was never translated into a concrete set of proposals, and this idea disappeared from view after her resignation.⁸⁹

By mid-2019, intergovernmental relations were at their lowest point since devolution had been introduced, 20 years previously. The Northern Ireland Executive was still in abeyance. Despite Labour’s strong commitment to the merits of the domestic Union, the Welsh government had been pushed much closer in political terms towards its Scottish counterpart, as it sought common cause in the struggle to influence the thinking of the UK government.⁹⁰ For the Scottish government, the commitment to the cause of independence and decision to align strongly with the ‘Remain’ cause meant that

86 Paun et al. (2019).

87 Cabinet Office, ‘An Update on Progress on Common Frameworks’, 3 July 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814326/Frameworks_Products_Update_.pdf, last accessed 16 March 2021.

88 T. May, ‘PM statement on new Brexit deal’, 22 May 2019, <https://www.gov.uk/government/speeches/pm-statement-on-new-brex-it-deal-22-may-2019>, last accessed 16 February 2021.

89 Personal recollection by Rycroft.

90 H. Phylip and G. Davies, ‘A new chapter in Welsh-Scottish relations?’, Centre on Constitutional Change, 30 May 2018, <https://www.centreonconstitutionalchange.ac.uk/opinions/new-chapter-welsh-scottish-relations>, last accessed 2 February 2021.

it was always likely to be antagonistic in its dealings with its counterpart in London.

By revealing with stark clarity the subordinate position of the devolved governments in relation to the UK's on an issue of major concern to the entire state, and by laying bare the extent to which the logic of parliamentary sovereignty trumped the quasi-federal ethos of devolution, Brexit shattered some of the ambiguities associated with the constitutional standing and rights of the devolution settlements. A vote in favour of staying in the EU in Scotland and Northern Ireland was essentially of no consequence in the face of a majority in England and Wales. The convention that had emerged since devolution about the constitutional value of the legislative consent granted by legislatures outside Westminster was revealed to have no practical effect if they were opposed to the will of a majority of MPs in the Commons. Finally, the weak and under-developed system of intergovernmental relations that had grown up since the millennium afforded the devolved governments no right to have a say on reserved matters, and very little influence over the course of the EU exit negotiations. Despite the introduction of new tiers of government across the UK, the centre was easily able to override the views of the devolved governments.

At the same time, an abiding desire to head off open rebellion and find ways to bring these governments on board was also apparent in this extended episode – particularly in the form of the efforts invested by Whitehall in IGR processes. May chaired four plenary meetings of the JMC, including one in Cardiff, and by the end of her tenure the JMC(EN) had met a total of 17 times.⁹¹ Although never formally articulated

as a policy objective, the UK government, under her leadership, tried to present itself as reasonably consultative in its approach to dealing with the devolved governments, and believed that it might have some success in appealing over the heads of their ministers to the publics they represented. In more normal times, this approach might have borne some fruit. However, the deeply contentious nature of Brexit, the high policy stakes involved, and the depth of the divisions aroused, meant that intergovernmental relations in this period could never escape a crisis-management mode. The British state was simply not prepared, either by precedent or inclination, to afford the devolved governments sufficient salience in the exit process in a way that might have enabled it to challenge their contention that they were being systematically excluded. The wider narrative that emerged from this period was one of the British state's imperious disregard for the preferences of its devolved counterparts.

Coronavirus

By the time the UK left the EU at the end of January 2020, a very different crisis had broken, and it too resulted in a profound shock to Whitehall's approach to territorial management after devolution. Coming hard on the heels of Brexit, the coronavirus pandemic has interacted in complicated and unpredictable ways with the political shifts and constitutionally rooted conflicts that the UK's departure from the EU engendered.

The pandemic has further widened fault lines which were opened by Brexit, but it also created new pressures, and at times offered the prospect of some of the divides associated with

91 UK Government, 'Communiqués from the Joint Ministerial Committee (EU Negotiations)', <https://www.gov.uk/government/collections/communiques-from-the-joint-ministerial-committee-eu-negotiations>, last accessed 16 February 2021.

the latter being healed. For a start, there was no major disagreement across the UK over the main policy goals that needed to be pursued in the context of the pandemic. The prospect of the country being brought back together by a common foe led some commentators to express the hope that this might prove to be a unifying experience, in contrast to the fractures that arose after the EU referendum.⁹²

Such hopes quickly proved fanciful, and this was in part down to the structural absence of a settled pattern of engagement and trusted decision-making among the governments of the UK. It was also, however, a product of the political style and approach adopted by the new British government and its leader, Boris Johnson.

Whereas Brexit highlighted the absence of ways available to the devolved governments to engage meaningfully in reserved matters with the UK government when they disagreed with the latter's priorities, coronavirus has drawn attention to a different kind of challenge for the existing governance arrangements – that of co-ordinating responses across the four administrations in areas where each has significant autonomy. One immediate, and unexpected, consequence of this pattern has been that the UK government has often been making decisions for England alone. This process has felt strange and unfamiliar to many citizens as well as the political and administrative guardians of the British state. At

the same time, the inherent interconnections between the effects of decisions made by governments in territorial jurisdictions in close proximity to each other, in the context of an airborne virus, have created the imperative for closer forms of co-operation and co-ordination for various administrative reasons – as for instance in the case of attempts to agree a joint approach to the management of individual and family behaviours over Christmas 2020.

This latter imperative appeared to be in the ascendancy in the early weeks after the outbreak's seriousness was officially acknowledged. The leaders of the devolved administrations were invited to attend meetings of Whitehall's COBR (Cabinet Office Briefing Rooms) emergency committee – a rare occurrence, though with precedents following major terrorist attacks and during the foot-and-mouth outbreak in 2001.⁹³ On 2 March 2020 this body agreed a joint 'action plan', endorsed by all of these administrations, and with the logos of all emblazoned on its cover. This set out the key steps that might become necessary as the outbreak developed.⁹⁴

Subsequent COBR meetings on this topic similarly led to actions agreed by all the governments, including many of the key decisions to escalate social distancing measures, culminating in the move to implement a statutory 'lockdown' across the whole country on 23 March. In a neatly choreographed sequence, Johnson's subsequent televised broadcast was

92 C. Deerin, 'Why coronavirus will force the SNP to entirely remake the case for independence', *New Statesman*, 19 April 2020, <https://www.newstatesman.com/politics/staggers/2020/04/why-coronavirus-will-force-snp-entirely-remake-case-scottish-independence>, last accessed 8 January 2021; P. Hennessy, 'After COVID-19', Mile End Institute, 24 June 2020, <https://www.qmul.ac.uk/mei/news-and-opinion/items/after-covid19---lord-peter-hennessy.html>, last accessed 8 January 2021.

93 A. Trench and H. Jarman, 'The practical outcomes of devolution: policy-making across the UK', in A. Trench (ed.), *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, 2007), p. 131.

94 UK Government, Northern Ireland Executive, Scottish Government and Welsh Government, *Coronavirus: action plan – A guide to what you can expect across the UK*, 3 March 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869827/Coronavirus_action_plan_-_a_guide_to_what_you_can_expect_across_the_UK.pdf, last accessed 13 November 2020.

immediately followed by similar statements from the leaders of each of the devolved governments.⁹⁵ As this period of ‘lockdown’ began, the ‘Stay Home, Protect the NHS, Save Lives’ slogan was adopted as the central pillar of a shared communications strategy. Each of the devolved governments supported legislative consent motions under the Sewel convention for the Coronavirus Act, which gave central and devolved governments various new executive powers to assist its handling of the pandemic.

During the onset of the initial wave there were some, fairly minor, points of divergence between the approaches taken. As restrictions were introduced across the UK, consistency was often soon restored. For example, the Scottish Government advised that large gatherings should be cancelled on 12 March 2020, a few days before this became policy across the UK.⁹⁶

Given the rows that have happened since, it is easy now to forget the degree of co-operation between the four administrations that prevailed in the early weeks of the Covid-19 crisis. This was to a considerable degree underpinned by the extent of cross-governmental engagement at both official and ministerial levels. The Scientific Advisory Group for Emergencies

(SAGE) was attended by the key medical and scientific advisers for each administration from the beginning of February 2020, and ministers were, for the most part, working from an overlapping evidence base as they grappled with this threat.⁹⁷ Meetings of the heads of government within COBR were complemented by the participation of sectoral ministers from each government in Ministerial Implementation Groups (MIGs), which met almost daily between late March and late May, primarily as a vehicle for the pooling of information.⁹⁸

There were also regular calls involving senior figures from across the governments to co-ordinate on communication strategies, chaired by Michael Gove.⁹⁹ In evidence given to the Commons Public Administration and Constitutional Affairs Committee in June 2020, ministers in all of the governments spoke positively about the role which these *ad hoc* forms of intergovernmental engagement played in enabling co-ordination and information-sharing during the early weeks of the pandemic.¹⁰⁰ This phase of fairly effective co-operation gives the lie to the assumption of much commentary that devolution itself was the root cause of the territorial divisions

95 B. Johnson, ‘Prime Minister’s statement on coronavirus (COVID-19)’, 23 March 2020, <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020>, last accessed 13 November 2020; N. Sturgeon, ‘Coronavirus (COVID-19) update: First Minister’s speech’, 23 March 2020, <https://www.gov.scot/publications/first-minister-covid-19-update-1/>, last accessed 13 November 2020; M. Drakeford, ‘First Minister of Wales’ statement on new coronavirus measures’, 23 March 2020, <https://gov.wales/first-minister-of-wales-statement-on-new-coronavirus-measures>, last accessed 13 November 2020; NewsLetter, ‘Coronavirus: Arlene Foster says UK lockdown ‘won’t be easy but for the best’’, 23 March 2020, <https://www.newsletter.co.uk/news/politics/coronavirus-arlene-foster-says-uk-lockdown-wont-be-easy-best-2509724>, last accessed 13 November 2020.

96 Scottish Government, ‘First Minister announces large events to be cancelled’, 12 March 2020, <https://www.gov.scot/news/first-minister-announces-large-events-to-be-cancelled/>, last accessed 13 November 2020; H. Stewart, ‘UK to ban mass gatherings in coronavirus U-turn’, *The Guardian*, 13 March 2020, <https://www.theguardian.com/world/2020/mar/13/uk-to-ban-mass-gatherings-in-coronavirus-u-turn>, last accessed 13 November 2020.

97 Public Administration and Constitutional Affairs Committee, *Oral evidence: Responding to Covid-19 and the Coronavirus Act 2020*, 23 June 2020, HC 377 2019-20, Q62-63.

98 J. Sargeant, *Co-ordination and divergence: Devolution and coronavirus*, October 2020 (London: Institute for Government).

99 Public Administration and Constitutional Affairs Committee (2020), Q75.

100 Public Administration and Constitutional Affairs Committee (2020), Q75.

that have become apparent as the health crisis has unfolded. To the contrary, the early model of partnership-working was broadly effective, despite the different political colours of the governments involved, and was dismantled because of a series of political choices – primarily those made by the Johnson government.

This co-ordinated pattern first broke down in a significant way as attention turned to how and when to exit the ‘lockdown’ measures introduced in March.¹⁰¹ On 10 May 2020 Johnson set out a phased process for the reopening of schools and different parts of the economy, in light of increasing pressure from some Conservative MPs and parts of the media for a clear ‘exit strategy’.¹⁰² Unlike previous announcements, this had not been agreed with the devolved leaders who complained that it had been trailed in the press before they had been consulted. There were complaints too that he failed to make clear in his broadcast that most of what he was announcing would apply only in England, giving rise to the suspicion that accepting this awkward reality might diminish the standing of his own office.¹⁰³ This point was brought home in the House of

Commons when, asked whether he was acting as the ‘Prime Minister of England’ by Plaid Cymru MP Liz Saville-Roberts, he instinctively recoiled from the suggestion and insisted that he rejected it completely.¹⁰⁴ One factor in the UK government’s decision to move away from the more collaborative mode for managing this crisis was Johnson’s wariness of the perception that he might be viewed as being on a par with the heads of the devolved governments.

An even more important reason for policy divergence at this moment was the differing judgment of political leaders across the UK about the nature and implications of the scientific evidence about the spread of the virus, and the belief that the UK government under Johnson was moving out of lockdown too quickly. The devolved leaders decided to keep the original ‘Stay at Home’ message at this point, instead of adopting the ‘Stay Alert, Control the Virus, Save Lives’ slogan unveiled by the UK government in Johnson’s 10 May 2020 broadcast, which sent a clear signal that the previous pattern of co-ordinated action was at an end.¹⁰⁵

The four administrations proceeded to announce their own plans for exiting

101 J. Sheldon and M. Kenny, ‘Why have the UK’s governments diverged on easing lockdown?’, Centre on Constitutional Change, 11 May 2020, <https://www.centreonconstitutionalchange.ac.uk/news-and-opinion/uks-governments-diverged-easing-lockdown>, last accessed 13 November 2020.

102 B. Johnson, ‘Prime Minister’s statement on coronavirus (Covid-19)’, 10 May 2020, <https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-10-may-2020>, last accessed 13 November 2020.

103 M. Kenny and J. Sheldon, ‘How COVID-19 is exposing unresolved issues about how England is governed’, British Academy, 6 July 2020, <https://www.thebritishacademy.ac.uk/blog/how-covid-19-exposing-unresolved-issues-about-how-england-governed/>, last accessed 16 February 2021.

104 HC Deb 11 May 2020 vol 676 col 33.

105 J. Merrick, ‘Stay alert slogan sparks revolt from Scottish, Welsh and Northern Irish governments’, i, 10 May 2020, <https://inews.co.uk/news/stay-alert-slogan-sparks-revolt-scotland-wales-northern-ireland-426525>, last accessed 13 November 2020.

lockdown.¹⁰⁶ While there were inevitably some similarities, differences in approach began to emerge more clearly, and were more apparent by the summer. By June, there were four different sets of rules in operation across the country about meetings between households.¹⁰⁷ Overall, the general policy trend was for restrictions to be eased somewhat more slowly in Scotland and Wales than in England and Northern Ireland. In other respects – for instance in its approach towards care homes – the Scottish government acted in similar ways to its UK counterpart. However, its leader Nicola Sturgeon’s presentational skills, and growing doubts about Johnson’s handling of the crisis, meant that her approval ratings improved while his diminished markedly – in both Scotland and England.¹⁰⁸

From May 2020, the extent of intergovernmental engagement between politicians in the respective governments on this issue declined considerably. No COBR meetings were held from then until September. When they resumed on 22 September and 12 October, ahead of two key UK government announcements, they did not result in the sort of coordinated action that had taken place in the spring. Meanwhile, the MIGs had been wound down in late May when the UK government

made important changes to the Whitehall machinery for handling the pandemic, aimed at streamlining decision-making within two cabinet committees on Covid-19 strategy and operations. The devolved governments were not invited to attend the new committees, and were now without an established forum where they could engage with ministers in London – a development that made different policy approaches all the more likely. The Welsh First Minister, Mark Drakeford, reported that he had spoken to Johnson only once between May and September 2020.¹⁰⁹

The number of recorded coronavirus cases and deaths again began to rise across all parts of the UK in the autumn. And now, the different administrations pursued their own responses with much less direct recourse to what each other was doing. But the close ties and interdependencies which provide challenges for public administration in a state with multiple authorities and proximate territorial jurisdictions, especially in relation to an airborne virus, have been impossible to evade. Some of the policies pursued by each of the governments have inevitably had knock-on effects for other parts of the country. This was most obviously true of the economic support schemes, which were the responsibility of

106 Northern Ireland Executive, *Coronavirus: Our Approach to Decision-making*, 12 May 2020, https://www.nidirect.gov.uk/sites/default/files/publications/OUR_APPROACH_DOCUMENT_SUMMARY_12-05-2020.pdf, last accessed 13 November 2020; Welsh Government, *Unlocking our society and economy: continuing the conversation*, 15 May 2020, <https://gov.wales/unlocking-our-society-and-economy-continuing-conversation>, last accessed 13 November 2020; Scottish Government, *Covid-19 – Framework for Decision Making: Scotland’s route map through and out of the crisis*, 21 May 2020, <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/>, last accessed 13 November 2020.

107 Sargeant (2020), p. 8.

108 A. McDonnell, ‘SNP maintain strong lead in Holyrood voting intention’, YouGov, 12 November 2020, <https://yougov.co.uk/topics/politics/articles-reports/2020/11/12/scottish-independence-yes-51-49-no>, last accessed 2 February 2021; S. Macnab, ‘Nicola Sturgeon is best performing party leader, says UK-wide poll’, *The Scotsman*, 11 January 2021, <https://www.scotsman.com/news/politics/nicola-sturgeon-best-performing-party-leader-says-uk-wide-poll-3091673>, last accessed 2 February 2021.

109 ITV News, ‘Drakeford calls on Johnson to ‘engage’ with devolved nations during ‘most difficult week’’, 18 September 2020, <https://www.itv.com/news/wales/2020-09-18/first-minister-gives-update-on-pandemic-after-first-covid-19-deaths-in-wales-since-august>, last accessed 13 November 2020.

the UK Treasury. Tensions also emerged over decisions taken by the devolved governments, for instance a Welsh Government policy of restricting travel into Wales from other parts of the UK, which irked a number of Conservatives, and was – wrongly – described by the Leader of the House of Commons, Jacob Rees-Mogg MP, as ‘unconstitutional’ in character.¹¹⁰

During the final months of 2020 and into early 2021, politicians in all parts of the UK struggled to keep coronavirus cases and deaths under control. Each government reimposed stricter ‘lockdown’ measures in response, but now followed their own timetables. There was a return to collaboration over the rules in the run-up to the Christmas period, with the governments initially agreeing that a uniform set of restrictions on travel and gatherings would be desirable at a time when people often cross the UK’s internal borders. Following intergovernmental talks, on 24 November it was announced that across the UK people would be able to form a ‘Christmas bubble’ of up to three households between 23 and 27 December.¹¹¹ But following an alarming rise in infection rates, this cross-UK policy was abandoned shortly before it was due to come into operation. Instead, each government separately announced tighter restrictions and advised against travelling long distances. Regular video conferences chaired by the UK government’s Chancellor of the Duchy of Lancaster, Michael Gove, with the leaders of the devolved

governments and the territorial Secretaries of State were established from December.¹¹² But notably these were not attended by Boris Johnson, and they seem to be principally forums for information-sharing, on a broadly similar model to the JMC (European Negotiations) in relation to Brexit, rather than the joint decision-making seen in COBR during the first wave. Some important official-level engagement has also continued, for instance meetings of the respective Chief Medical Officers.¹¹³

How and why the initial emphasis on co-ordination and co-operation gave way to much greater divergence, and open political conflict, during the course of pandemic, is one of the most important questions raised by the Covid-19 crisis for Britain’s structures of government. The pandemic has shone a harsh, unforgiving light upon the poorly developed, and often mistrustful, relationships between the devolved and UK governments, and set the scene for growing doubts about the future viability of the devolved Union.

The initial impulse towards co-operation was in part a reflection of limited capacity within the devolved governments to initiate independent responses to such a fast-moving and unanticipated crisis. Faced with the need to make critical decisions at high speed, falling back on the common evidence base provided by SAGE and the advice of the key government scientific advisers was, in some ways, the easiest option. But this situation began to

110 HC Deb 15 October 2020 vol 682 col 530.

111 UK Government, Northern Ireland Executive, Scottish Government and Welsh Government, ‘Joint statement on UK-wide Christmas arrangements from the UK Government and devolved administrations’, 24 November 2020, <https://www.gov.uk/government/news/joint-statement-on-uk-wide-christmas-arrangements-from-the-uk-government-and-devolved-administrations>, last accessed 2 February 2021.

112 UK Government, ‘Communiqués on COVID-19 engagement’, <https://www.gov.uk/government/publications/communiqués-on-covid-19-engagement>, last accessed 16 February 2021.

113 The Chief Medical Officers have been given responsibility to collectively advise on the UK-wide Covid-19 alert level; UK Government, ‘UK COVID-19 alert level methodology: an overview’, <https://www.gov.uk/government/publications/uk-covid-19-alert-level-methodology-an-overview/uk-covid-19-alert-level-methodology-an-overview>, last accessed 5 March 2021.

change as the crisis unfolded, with each of the governments developing its own additional processes for absorbing scientific input within its own decision-making. The Scottish Government established its own scientific advisory group on coronavirus in late March, while the Welsh administration had a similar group in place by May.¹¹⁴ These bodies, along with a general increase in available evidence around the impact of particular policies, are likely to have significantly reduced the devolved governments' dependence on Whitehall bodies such as SAGE.

Political factors and choices were perhaps even more integral to this change in the tenor of cross-governmental relations in this period. Initially, it was widely considered that this common crisis required a common and swift response. But as the UK government's response elicited growing criticism, devolved leaders determined to strike a clearer distance from Johnson's strategy. The Scottish and Welsh governments appeared to take a more cautious approach to the management of the risk, which contributed to a slower easing of restrictions over the late spring and summer of 2020, maintaining a greater emphasis on suppressing the virus in public communications, and moving more quickly to reimpose extensive restrictions when cases increased in the autumn.

Differences between these responses should not automatically be taken as a sign that the devolved Union is working badly. The ability to make different decisions, and trade off policy goals in different ways, is an integral feature of a devolved system of government. It may at times have enabled policymakers to make decisions

that were more reflective of local conditions. Yet, given the geographical proximity between these areas, and the nature of the interdependencies between their peoples and economies, the decline of effective co-operation and open communication in this period is a telling indication of one of the enduring weaknesses of the UK model of territorial governance. Having worked together effectively according to ministers from each of the governments in the spring, intergovernmental co-operation had all but dried up by the autumn.

The underdeveloped character of the UK's intergovernmental machinery more than two decades after devolution was first introduced, and the thinning out of trust between devolved and central government, were laid bare in the course of these events. While COBR and the MIGs proved to be useful forums for communication between these administrations in the initial phase of the crisis, these arrangements were entirely conditional on the UK government's willingness to make these channels available. For long periods from summer 2020 onwards there were no regular meetings where senior figures in these governments might share information and raise concerns directly with ministerial counterparts. While some contact between them continued, particularly at official level, this was intermittent and uneven, and did not prevent some damaging public spats. Some of these might have been more muted if more regular, and more purposeful, meetings had continued.

¹¹⁴ Scottish Government, 'Scottish Government Covid-19 Advisory Group', <https://www.gov.scot/groups/scottish-government-covid-19-advisory-group/>, last accessed 13 November 2020; Welsh Government, 'Technical Advisory Cell', <https://gov.wales/technical-advisory-cell>, last accessed 13 November 2020.

Reinventing the centre

In the context of rising concerns about the integrity of the UK, a number of political figures and commentators are arguing that the problems confronting the UK Union are of such an order that they can only be resolved by fundamental constitutional change. We do not take a position on that question here, but our historical overview does lead us to the judgement that there are a series of practical steps that could be taken by the centre to improve the ways in which it approaches and institutionalises its relationships with other governments within the UK. These are unlikely to be sufficient by themselves to save the Union, but they are necessary changes if it is to be rendered more stable over the medium-to-longer term.

In this section we highlight some of the most notable deficiencies and absences in central government's approach to devolution and provide some broadly drawn ideas about how these might now be remedied. We argue, in particular, for intra-UK consultation and engagement to be embedded far more deeply into the culture and machinery of the UK state. In the context of the conflictual politics of the current moment, the *ad hoc* and reactive approach to the handling of devolution and territorial politics apparent since the late 1990s is, we conclude, no longer sustainable. Politicians and officials operating at the centre must become better equipped for, and far more accustomed to, engaging with issues relating to devolution and territorial politics. And they must be able to do so with a better feel for, and understanding of, the political cultures and histories of all parts of the UK.

A core theme running through our historical overview is that there has been a reluctance to reflect on the role of the central state itself, following major recent reforms to the territorial constitution. This has remained largely true even after the experience of the Scottish independence referendum, and amid the pressures placed on the Union by Brexit and coronavirus. This is partly because devolution in the UK has been much more orientated towards the idea of self-rule by the devolved governments, and much less focused upon the importance and practice of shared-rule by the four governments across the UK. With the changes brought about by recent enhancements to the devolution settlements, and the return of substantial powers from Brussels after Brexit, the number of domains in which shared powers will have to be exercised has increased significantly. The mind-set of the centre, at both Whitehall and Westminster, needs to catch up with these changes. In the contemporary context, we emphasise the need for reforms which create the conditions in which new kinds of partnership and co-operative working are more likely.

Some of the tensions that have grown up between the UK and devolved governments in recent years can be traced, in part, to insensitive handling at the administrative centre of policy decisions that carry implications for devolution. Devolved ministers have frequently complained at not being alerted to policies that have profound consequences for their own competences before they enter the public domain. This appears to reflect a reluctance within UK government circles to share information with counterparts elsewhere, particularly on politically sensitive legislative issues. It also reflects a lack of awareness in parts of the political and administrative centre of the knock-on effects of legislative decisions at

Westminster for the devolved territories, and a tendency to misread how these will be received by politicians operating in other parts of the UK. Such missteps make an already difficult context for handling intra-UK relationships even more challenging.

One key ingredient of a revamped approach in this area would be to address the territorial implications of policy decisions at an earlier stage of the policy process. The reality of the ‘jagged edge’ between devolved and reserved competences means that there is often a good argument for some level of intra-UK consultation even before legislation is drafted. On such matters, the devolved governments should be engaged as soon as is feasible, before positions harden and differences escalate into public rows. In the case of legislation, this should be before drafting begins. There is, almost always, no good justification for devolved ministers hearing about policies that will have significant knock-on effects for their own territories at the last minute.

Lessons on this score could be learned from some of the more successful examples of intergovernmental engagement over recent years. These have included the co-operation around Brexit ‘no-deal’ preparations and the closely co-ordinated approach that was in evidence during the early months of the coronavirus pandemic. In these cases, there has been extensive and sustained official-level collaboration, from the early stages of considering an issue right through to the process of communicating advice and decisions to the wider public. Public disagreement between governments on these matters was relatively minimal. But this more productive and co-operative engagement is contingent on the willingness of UK ministers to bring their devolved counterparts into the policy process.

This should become the norm rather than the exception, and on more mundane issues as well as in the midst of crises.

A new culture of consultation and engagement – and an ethos of inter-governmental partnership – needs to percolate right across central government. At present some parts of Whitehall appear more engaged and connected with other governments than others. And yet, such co-ordination is necessary in almost all areas of policy, including those that are fully devolved and fully reserved, as well as those that sit on the boundary between these categories. During the coronavirus pandemic, the interaction between devolved and reserved policies has been repeatedly highlighted, with the Scottish, Welsh and Northern Irish administrations responsible for introducing ‘lockdown’ measures but central government responsible for financial support to businesses and individuals impacted by these. Some of the tensions that have, at times, emerged in relation to these issues might well have been alleviated had more channels of communication between the governments remained open throughout this crisis. Instead, these remained mostly closed as the UK began to emerge from the initial period of lockdown.

A related, significant shift is also required in the way that Whitehall ‘devo-proofs’ the policies it develops. The specific machinery needed to achieve this – whether a separate devolution or Union cabinet committee, or a devolution process embedded in the functioning of all cabinet committees – is less important than the overall objective. No policy should be advanced from the centre without a conscious acknowledgement of its likely impact on other affected territories within the UK.

One notable institutional cause, and reflection, of the failure to prioritise this kind of engagement is the continued absence of a functioning and legitimate machinery to bring the UK's governments together on a regular basis. Since devolution was introduced, the Joint Ministerial Committee has come to be regarded by both devolved governments and some in the UK government as insufficient in the context of the constitutional challenges of recent years. Its meetings have been intermittent, and often characterised by the raising of grievances rather than substantive discussion of policy issues of common interest. A new culture of consultation and mutual engagement needs therefore to be underpinned by more robust mechanisms for intergovernmental relationship-building, of the kinds that have been developed in many other multi-level states.

The case for an overhaul of the inadequate existing machinery has already been widely accepted, and a joint review involving the four governments has been ongoing since 2018. Following several delays, an update on progress with this review was published in March 2021.¹¹⁵ This indicated agreement had been reached around a number of relatively modest, but potentially important, reforms that have been proposed for some years, including: incorporating consensus decision-making into the terms of reference for IGR; routinely rotating chairs and venues for some intergovernmental forums; establishing additional sub-forums for regular meetings of sectoral ministers with equivalent portfolios; and revising the dispute resolution process to provide for independent mediation. Some differences between the governments still

remain to be resolved in this area at the time of writing, including over whether to rebrand the plenary meetings of the Joint Ministerial Committee as the UK Government and Devolved Administrations Council, and whether the Prime Minister should be able to send a nominated deputy to these meetings rather than attending in person. But there are some grounds for optimism that a more functional machinery for intergovernmental relations could soon be in place.

There is a wider need as well to reflect upon the complacent and frequently un-strategic mindset that informs the ethos and thinking of central government in its dealings with other layers of government within the UK – including English local and combined authorities. Embedding intra-UK consultation and engagement into the operational culture of the British state means addressing the high levels of ignorance and misunderstanding about devolved politics and the territorial constitution in some of Whitehall's core departments. There have already been some institutional initiatives focused on this challenge, but these have not yet achieved a sea change in how ministers and civil servants engage with territorial politics. These issues were a key focus for the review of 'UK Government Union capability' commissioned by the May government in 2019, which was conducted by Lord Dunlop. His report was made public by the Johnson administration in March 2021, and made a number of recommendations aimed at deepening Whitehall's engagement with the devolved parts of the UK, the most eye-catching of which was establishment of a new, senior cabinet post with responsibility for managing intergovernmental relations and

115 UK Government, 'Progress Update on the Review of Intergovernmental Relations', March 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972983/Progress_update_on_the_review_of_intergovernmental_relations.pdf, last accessed 30 March 2021.

constitutional policy.¹¹⁶ How seriously Dunlop's recommendations are taken will be a key litmus test of central government's commitment to reform in this area

Whitehall, we contend, needs to take a leadership role – rather than merely assuming a watching brief – in these areas, and build out from the work started by the UK Governance Group. A greater focus on the character, legal framework and history of the British state and the post-devolved Union needs to be incorporated within civil service professional development programmes. This endeavour should be undertaken in tandem with the devolved administrations, including enabling civil servants working in each government to spend time on learning about how the other governments work, through developing and extending practices such as joint training events, shadowing schemes and secondments, all of which can help to promote mutual understanding of the different contexts across the UK, and strengthen professional connections between officials working in each government. Ultimately, this is about changing the mentality that civil servants bring to their work. It should be clear that good understanding of UK governance and devolution is a prerequisite for promotion into the senior civil service and direct experience of government outside Whitehall, either in devolved or local government, should be viewed as a positive advantage.

More generally, devolution offers an unparalleled opportunity for policy learning, yet only a change in mindset in all of the relevant administrations will mean that it can be properly taken. All of them are pursuing distinct agendas in devolved policy areas like

education, healthcare and enterprise. This means that there is a quite considerable pool of policy experience upon which all should be able to draw as they develop their own programmes and strategies. While learning from countries further afield will always be valuable, the outcome of policies implemented closer to home will often have greater relevance, not least because of the significant cultural and demographic similarities between the peoples of the UK. And yet, for the most part, policymaking in different parts of the UK is referenced negatively at Westminster in order to score points against a rival party.

There are good reasons also to address the low levels of understanding and engagement among MPs that represent English constituencies with the nature and realities of devolved government and, more generally, with the circumstances and cultures of the different parts of the UK. Unlike in countries like France or Germany, it is rare for Westminster MPs to have experience of devolved government before they enter the UK parliament. The decision to introduce devolution without any kind of wider engagement with English opinion has left many politicians poorly equipped to engage in informed and meaningful discourse on these issues. However, there may well be value in making some kind of training about the territorial constitution and the division of responsibilities between different parts of the UK available to newly-elected MPs. And this approach might well be enhanced by greater connectivity and exchange between the UK parliament and the devolved legislatures. There is a strong case to be made for strengthening arrangements for intra-UK interparliamentary relations, which have

116 Dunlop (2021).

been limited in frequency and scope since the introduction of devolution.¹¹⁷ This would leave legislatures across the UK better placed to engage with issues relating to territorial politics, and help to promote mutual understanding of the perspectives of politicians in different parliaments.

An increasingly sceptical current of opinion about the nature and implications of devolution has gained ground at the top of the Conservative Party, and was reflected, in 2020, in Boris Johnson's unguarded comments to MPs about devolution in Scotland being 'a disaster'.¹¹⁸ This kind of sentiment reflects the revival of an older unionist modality at the apex of British politics, which is increasingly expressed in combative terms.¹¹⁹ Whether this yields the right strategic approach for unionists to adopt in the current, increasingly fraught, political context is an issue that needs to be more widely and publicly aired. If the choice that is presented, for instance, to the Scottish public in the coming years is between independence and a new species of unitarist unionism, there is a very good chance that more political support will grow for the first of these options. Furthermore, the 'neo-unionism' that prevails at the top of the current government could well generate a deepening divide with those unionists who are still supporters of the principle and much of the practice of devolution.¹²⁰

The argument between these camps needs to be more fully informed by an appreciation of the history and development of devolution, and a more rounded, evidence-based evaluation

of the strengths and weaknesses of the British approach to territorial management. We hope to have made a small contribution to the kind of wider-angled appraisal of devolution and the UK Union which is increasingly imperative as debates about its viability and desirability move into the heart of political life.

The bilateral, incremental and asymmetrical approach at the political and administrative centre to developing devolved institutions which we have charted in this paper may well have run its course. In its place there is a growing need for a more open and informed debate, more strategic thinking, and a more balanced, flexible and functional system of multi-layered governance with cross-governmental consultation and engagement at its heart. Without this, it is almost inevitable that relationships between the governments of the UK's component parts will continue to deteriorate, adding further to the already significant strains on the Union, and ultimately to the risk of its break-up.

117 J. Sheldon and H. Phylip, Written evidence to the House of Commons Procedure Committee inquiry on the procedure of the House of Commons and the territorial constitution, November 2020, <https://committees.parliament.uk/writtenevidence/14593/pdf/>, last accessed 5 March 2021.

118 BBC News, 'Boris Johnson "called Scottish devolution disaster"', 17 November 2020, <https://www.bbc.co.uk/news/uk-politics-54965585>, last accessed 24 February 2021.

119 Kenny and Sheldon (2020a).

120 M. Keating, *State and Nation in the United Kingdom: The Fractured Union* (Oxford: Oxford University Press, forthcoming).

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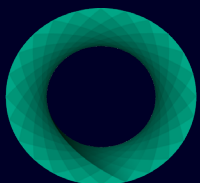
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