

Two Models of Devolution A Framework for Analysis

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Introduction

This chapter describes the nature of intergovernmental relations (IGR) between the UK and Scottish Governments. It begins with a discussion of two models of devolution. This is followed by a discussion of the background to devolution, how it came about, how it was conceived by its supporters in Scotland and the expectations that arose. This is then followed by a discussion of the nature of devolution in its first phase up to 2007, the implications of different forms of devolution for IGR, how it has operated since then and finally the prospects for IGR under a Conservative Government at Westminster.

The analogy drawn here is from a well established distinction in the literature on federal systems. Dual and interdependent forms of devolution are distinguished as a heuristic device to make sense of the operation of devolution. The first decade of devolution coincided with economic success and significant public financial gains as well as Labour in governments in Edinburgh and London and this had a crucial impact on its operation. The second phase has seen an economic decline with consequences for fiscal consequences and the election of an SNP Government. The prospect of the Conservatives returning to office raises questions as to how devolution will operate in the near future.

Two Models of Devolution

Much discussion of devolution in the UK is built on assumptions that were established before the Scottish Parliament was established. These assumptions have parallels with the dual model of federalism discussed in the literature on federalism. In practice, devolution has been more complex. In this section, two models of devolution, drawn from the literature on (especially) US federalism are offered as ideal types as a framework for analysing devolution and IGR in the UK.

Dual federalism

“holds that each level of government, nation and state, is supreme within its area of responsibility. According to this model, neither level is dominant in any general sense, and neither level should interfere in the affairs of the other.” (Nice and Fredericksen 1996, 6)

Writing about the US experience, Robert Schapiro identified three key features of dual federalism: federal and state governments “exercise exclusive and non-overlapping authority”; the allocation of authority “rests on functional premises, with the national government regulating certain kinds of matters and the state governments regulating different matters”; and the courts play an “important and distinctive role in maintaining the boundary between the states and national government” (Schapiro 2006, 4).

In the United States, the end of any conception of layered federalism is usually dated from the New Deal and it is notable that the idea of inter-governmental relations originated in the United States from then (Wright 1988, 3). Some have questioned whether dual federalism ever existed in the US but the orthodox view is that the dual model passed away with the New Deal when the boundaries between the exclusive competences of federal and state were abandoned in the eyes of the courts (Corwin 1950). Corwin's classic account noted four features of dual federalism: the federal government is only one of the enumerated powers; the federal government is limited government; federal and state governments are "sovereign" and "equal" in their respective spheres; and there is tension rather than collaboration in the relationship between federal and state government (Corwin, 4). Some of these characteristics are less relevant in the case of the UK, where Parliament remains formally sovereign and the courts have a relatively limited role, but the two characteristics of relevance as a model of dual devolution for our purposes in this chapter are the idea of separate jurisdictions with some degree of tension between the different levels of government.

A new model of federalism developed in the USA in which the federal government intervened in complex and multiple ways with state and local government including, most notably, in financing or subsidising various welfare and economic schemes. As Nice and Fredericksen remarked, "interdependent models are based on a sharing of power and responsibility, with the various participants often working toward shared goals". (1996, 7-15)

There is a rich variety of models under this broad heading borrowing an array of exotic metaphors including row boat federalism, picket-fence and bamboo fence federalisms. Schapiro's description of interactive federalism in the United States noted how federal and state governments "work together to advance a variety of policy goals ... also eschews the judicial focus of dualist federalism" (Schapiro 2006, 8). Morton Grodzins, who originated the notion of marble cake government in the United States in contradistinction to layered cake federalism, maintained,

"No important activity of government in the United States is the exclusive province of one of the levels [of government], not even what may be regarded as the most national of national functions, such as foreign relations; not even the most local of local functions, such as police protection and park maintenance" (Grodzins 1966, 8).

There are variations on this theme but metaphors and models of federalism now commonly highlight different forms of intergovernmental links and cooperation. Significantly, for the purpose of understanding devolution, the policy areas associated with interdependent federalism are welfare-type policies.

A great variety of forms of interdependent federalism can be identified but for our purposes we need to distinguish between cooperative and un-

cooperative forms. While many accounts of interdependent federalism assume common goals, this need not be the case. A system of interdependent levels of government pulling in opposite directions needs to be accommodated given the background to devolution. Though this can be seen as a subset of interdependent models, it may be of greater significance than that between dual and interdependent models as far as IGR are concerned. Of course, IGR will operate in different ways depending on policy area.

Some authors have suggested that it is

“puzzling that we rarely try to connect these competing visions [cooperative and dual federalism] and imagine how the state’s status as servant, insider, and ally might enable it to be a sometime dissenter, rival, and challenger” (Bulman-Pozen and Gerken 2009, 102)

and propose the idea of “uncooperative federalism” when a state uses its

“power to push federal authorities to take a new position, or when states relying on federal funds create welfare programs that erode the foundations of the very policies they are being asked to carry out”. (Bulman-Pozen and Gerken 2009, 103)

The role of the power of the servant referred to in this legal account (Ibid, 109-115) is similar to the idea of resource dependence in organisational theory (Pfeffer 1981) also applied to the study of central-local relations in the UK in the past (Griffiths 1966; Loughlin 1996; Rhodes 1981). In their discussion of the “power of the servant”, Bulman-Pozen and Gerken identify “at least three reasons why we might expect the states to exercise power even as they play the role of federal servant” (2009, 110): dependence – “the servant has discretion in choosing how to accomplish its tasks and which tasks to prioritize” (Ibid., 110) integration – “when an actor is embedded in a larger system, a web of connective tissues binds higher- and lower-level decision makers” (Ibid., 112); and two masters – “when state officials carry out federal programs, their constituencies are based within the state”. (Ibid., 114)

Background: Dualist Demands

There is a considerable literature on the background to devolution in the UK (Bogdanor 1999; Keating 2005; Mitchell 2009) and remarkable consensus on its origins. In essence, support for devolution was based on a distinct Scottish culture that was mobilised by opponents of the Conservative Government. As Rokkan and Urwin expressed it, “together, cultural base and economic catalyst provide a base for [nationalist] mobilisation.” (1983, 189)

This contingent explanation is insufficient, as is evident from earlier periods when a minority government ruled Scotland without the same demand for devolution (1959-64; 1970-74). The role of political actors, mobilising support for devolution, pushing the issue up the political agenda, was important. How these actors conceived of and articulated the case for

devolution proved significant and has had consequences for its operation and for public expectations. The prime motivation of supporters of devolution was defensive, to protect Scotland from the perceived costs of "Thatcherism".

The motivation presupposed the existence of some form of Scottish politics that focused on distinct political institutions, most notably the Scottish Office. That office was established in 1885 and Scottish Secretaries served continuously in the British Cabinet from 1892, apart from war cabinets, and gained a wide range of administrative responsibilities over time (Mitchell 2003). Its role was seen as representing Scottish interests in the Cabinet and the Cabinet's interests in Scotland but latterly, under the Conservatives, it was perceived to be performing the latter at the cost of the former. Donald Dewar, introducing the devolution legislation in the House of Commons, explained the background,

"We all remember that embittered disaster of the poll tax and the investment in the private Health Care International hospital in Clydebank rather than in the national health service. We all remember that, while parents wanted investment in their children's education, energy and resources were devoted to encouraging schools to opt out, and almost none of them did. This Bill is the means of ensuring that such madness - it was madness, with each and every one of those measures standing as an affront to the democratic wishes of the communities that the Administration responsible purported to represent - can certainly never happen again. We have won a popular mandate in the referendum, and we are now creating an institution that can speak for the people of Scotland, is closer to their needs and concerns, and is ultimately accountable to them." (Commons, Hansard 12 Jan 1998: Column 22)

The message was simple. Devolution would give Scotland autonomy, an ability to pursue markedly different policies from those in England. Devolution was conceived in distinctly dualist terms.

A report that informed strategy on maximising public support for devolution in the 1997 referendum laid stress on this conception of devolution,

"Stress the governance issues - Scottish pride, identity, the intrinsic virtues of taking its own decisions. If voters come to regard the central issue of the referendums to be Scotland's *right to assert its nationhood* and run its own affairs, then the evidence of this survey suggests that both referendum questions should yield a clear 'Yes' majority" (Kellner 1996, 6) (emphasis in original)

This autonomy model of devolution places emphasis on the opportunities for experimentation in public policy – devolved government as laboratories for democracy, diffusing power and encouraging competition whether between devolved and central government or amongst devolved governments.

The devolved Parliament that was elected in 1999 was conceived in public rhetoric analogously with dual federalism. Devolution was a small "n" nationalist project. Campaigners paid scant attention to the UK and intergovernmental dimensions of devolution. It was this vision of devolu-

tion that was articulated and gained public support in the years prior to its establishment. It would also create its own expectations.

As the proposed Scottish Parliament would assume the responsibilities of the Scottish Office, and its civil servants would become part of a new Scottish Executive, the future role of the Scottish Office was uncertain. The Labour Party favoured retaining a much slimmed down office while the Liberal Democrats wanted the office abolished. The new Labour Government decided to retain the office and rebranded it the Scotland Office.

A great deal of policy-making that had been the responsibility of the Scottish Office allowed for a degree of autonomy and distinctive policies to be pursued. Dispute existed as to the precise extent of this distinctiveness but there was broad agreement that Scottish policies differed from those south of the border in a range of areas and within confines (Midwinter et. al. 1991; Moore and Booth 1989; Paterson 1994). Prior to devolution, it was assumed that the degree of autonomy available to the proposed devolved bodies would differ, following Lowi (1964), according to policy types with each based on the "impact or expected impact on the society" (Lowi 1964, 689). "Policy types" are used here as ideal types and that many policies recognising pieces of legislation have mixed policy types.

There was almost no scope for autonomy in policies designed to redistribute wealth between individuals largely because pensions, social security and other direct welfare policies were controlled by UK-wide Whitehall Departments. There was more autonomy in distributive policies, those involving spending on services rather than individuals, including public spending on services such as education, health and agriculture. The extent of distributive autonomy was dependent on monies made available to the Scottish Office, as a spending department, by the Treasury. The precise manner in which the Scottish Office budget was determined was never clear. What was clear was that the Scottish Office received a relatively generous allocation of funds, based on incremental historical budgetary decision-making, compared with budgets for equivalent spending available in England. A formula element, that came to be known as the Barnett formula⁶, was used in determining the budget and over time this element attained greater, especially political, significance. The Scottish Parliament would inherit this funding mechanism. The primary consequence was that the Scottish Parliament spending would be tied to allocations made for equivalent spending in the rest of Britain with changes occurring at the margins in each spending round – previously annualised but biennially after Labour came to power in 1997.

In addition to spending, the Scottish Office had powers to make laws – primary and secondary – across a range of matters, giving it considerable

⁶ After Joel Barnett, Chief Secretary to the Treasury and formally responsible for public expenditure from 1974 to 1979 though Barnett himself had nothing to do with its introduction.

regulatory powers over a range of matters. This included matters of law and order, especially given the Scottish criminal justice system, education and local government matters.

The responsibilities of the Scottish Office had grown incrementally over the course of more than a century. Though there was no conscious or explicit rationale, the Scottish Office's responsibilities focused heavily on welfare matters with distributive and regulatory powers - education, health, housing, local government - but also included policing and criminal justice as well as some limited economic planning functions. Many of these were in areas that in federal systems would be deemed appropriate to an interdependent model of intergovernmental relations. This interdependence was facilitated pre-devolution by the Scottish Office being a component of UK central government rather than a separate system of government. However it was this very interdependence that was objected to by supporters of devolution.

Despite the fact that devolved government would require intimate relations with Whitehall, there was remarkably little consideration of how IGR would operate. The rhetoric of sovereignty - whether popular or parliamentary - obscured the reality of interdependence. Campaigners for Scottish devolution articulated their case in terms of popular sovereignty (Scottish Constitutional Convention 1995, 10), while parliamentary sovereignty was asserted as the debate shifted to Westminster. Labour leader Tony Blair made it clear that he did not see devolution undermining parliamentary sovereignty in an interview during the 1997 election campaign (*Scotsman*, 4 April 1997) and both the white paper on devolution and the devolution legislation each made this clear. However, assertions of parliamentary sovereignty may define the formal limitations of devolution government but its practice and legitimacy would, as in the case of membership of the EU, undermine the practical significance of parliamentary sovereignty.

The system of IGR that has operated since devolution borrowed heavily from *Intra-Governmental* relations pre-devolution and there has been a great deal of learning on the job. Devolution campaigners were more concerned to delineate the boundaries between devolved and retained powers than to consider the relationships between and consequences of such delineation. Though latterly there were efforts to articulate devolution in terms of "modernisation", it was seen as a means of providing for "Scottish control of Scottish affairs". Whether by design or omission, the failure to address IGR contributed to entrenching a dual conception of devolution. Devolution, it was assumed, would make Scotland a place apart, protected from decisions made in Westminster.

The idea of having Joint Ministerial Committees (JMCs), bringing together Ministers of devolved and central governments, was literally a late night decision as the devolution legislation made its way through the House of Lords in response to an opposition proposal for a formal "Inter-parliamentary Consultative Commission" to ensure co-operation and

avoid damaging turf wars (House of Lords July 28, 199. cols.1486-7). The Government Minister in the Lords explained that it was the intention to have

“standing arrangements for the devolved administrations to be involved by the UK Government at ministerial level when they consider reserved matters which impinge on devolved responsibilities”

and that a Joint Ministerial Committee (JMC) would be set up on which the devolved administrations and the UK Government would be represented with membership varying according to the issue under consideration so that, for example, the fisheries ministers would be involved in fisheries matters (Ibid., 1487). The JMC would be an “entirely consultative body, supported by a committee of officials and a joint secretary”. (Ibid., 1488)

JMCs would facilitate cooperation between devolved and central governments and seek to avoid conflict. Both devolved and central governments could request JMC meetings (Memorandum of Agreement 2001). Agreements would be non-binding but it was anticipated that “participating administrations will support positions that the JMC had agreed” (Memorandum of Agreement 2001, A1. 10). Vague proposals set out a role for the Judicial Committee of the Privy Council, a throw-back to the old Imperial order, to adjudicate in matters of dispute. It might have been expected, given the assumptions behind a dual conception of devolution, that greater efforts would have been made to consider dispute resolution institutions.

Concordats and Memoranda of Understanding were drawn up between devolved and central government after devolution was established. These were described by Donald Dewar as “road maps for bureaucrats” (Scottish Parliament, 7th October 1999) and were not legally binding documents but some commentators speculated that they might be or evolve into “soft law”. (Scott 2001) Others identified five functions of concordats with the main function being procedural cooperation (Poirier 2001). The objectives behind the Concordats were to ensure good communication between devolved and central governments to reduce any prospect of either level being caught off guard by decisions made elsewhere.

Devolution in Practice: Dual, Interdependent and Functional

Devolved government has been more integrated, more affected by decisions in London than many of its supporters imagined. Devolution may have been conceived in dualist terms but in practice it has often appeared to conform to interdependent models. The challenge in understanding devolution is not whether it conforms to a dualist, cooperative or uncooperative model but understanding the circumstances and reasons why and when each is relevant.

Though its functions were largely devolved, the office of Scottish Secretary continued after devolution but was rebranded the Scotland Office. Representing “Scottish interests within the UK Government” and acting as guardian of the “devolution settlement” are amongst the “key responsibilities” listed on its website (Scotland Office 2009). It was envisaged that it would be the key institutional facilitator of IGR though accepted that IGR would occur bilaterally between Scottish Executive and Whitehall departments. Donald Dewar had been Scottish Secretary after Labour was elected in 1997 and served in this office until elected to the Scottish Parliament and became First Minister. He was replaced as Scottish Secretary by John Reid. Reid tried to cut out a role for the new office and was involved in a series of turf wars with Dewar and had particularly strained relationship with Henry McLeish, Dewar’s successor. After Reid, successive Scottish Secretaries played a less interventionist role until the SNP came to office.

Civil servants in the first phase commonly acknowledged the existence of Concordats and Memoranda of Understanding but frequently noted that they paid little formal attention to these documents. This was not because they saw them as irrelevant so much as these formalised existing arrangements that had been inherited and embedded from pre-devolution times when the Scottish Office officials would keep opposite numbers elsewhere in Whitehall informed in the hope that this would be reciprocated. The system of Joint Ministerial Committees proved less meaningful than had been expected. The plenary session failed to meet from October 2002 until after the SNP came to power even though there was a formal requirement that it should meet annually (Trench 2007). Instead, IGR operated informally during this first stage of devolution, the territorial version or Tony Blair’s “sofa government”. There have been a number of criticisms of the informal nature of IGR. The House of Lords Select Committee on the Constitution, for example, recommended that criteria should be determined to decide whether meetings of the JMCs should take place and that there should at least be annual meetings of functional committees (House of Lords Select Committee on the Constitution 2002, 17, para. 33).

Informal intergovernmental relations operated in this first phase of devolution largely through civil service and Labour Party contacts. There were occasions when Scottish Executive officials felt they had not been kept fully informed but probably no more so than Scottish Office officials felt cut out in the pre-devolution era. Whitehall had come to terms with devolution reasonably well especially those parts which had a long history of dealing with the Scottish Office. But devolution had barely been tested in this period though there were some significant issues that resulted in tensions between London and Edinburgh, notably policies on tuition fees and care for the elderly.

A distinctly Scottish policy on higher education funding emerged directly as a consequence of the Labour-Liberal Democrat coalition. The

Liberal Democrats had emphasised opposition to tuition fees in the 1999 election. While opposed by Labour, it was one of the key negotiating issues in the formation of the coalition. In the event, a compromise was agreed upon though one that resulted in a different policy north and south of the border and opened up the prospect of significant divergence over time. The extent to which this created immediate and significant divergence is disputed (Keating 2005, 183) but it did cause tensions and the prospect of future difficulties for Scottish universities unable to compete with their southern counterparts as the latter gained a new source of funding unavailable to their Scottish counterparts. The policy had spillover consequences that required resolution with students from outside Scotland attending Scottish universities and Scottish domiciled students studying in England. A European dimension emerged. While English students at Scottish universities would be obliged to pay tuition fees, students from outside the UK but within the EU were treated the same as Scottish students and did not have to pay tuition fees.

A distinctly Scottish policy on care for the elderly policy created more tensions on the initiative of Henry McLeish, newly elected First Minister following Donald Dewar's death. McLeish set out to push the boundaries of devolution. His predecessor had rejected calls for a generous package of state support for the elderly infirm, as recommended by a Royal Commission established by Blair's Government. Dewar had followed London's lead but McLeish re-opened the issue creating considerable tensions between London and Edinburgh.

Henry McLeish, new First Minister, was keen to pursue this policy and had the support of the Scottish Parliament but faced considerable opposition from Labour colleagues at Westminster (Simeon 2003). The latter highlighted the integrated nature of devolved public finances. Attendance allowances, paid to those over 65 who need to be looked after due to illness or disability, were benefits controlled by Westminster. The UK Government stopped attendance allowance payments for elderly people in care homes in Scotland when the Scottish Executive introduced its care for the elderly policy. This initially cost the Scottish Executive £23m in 2002 rising to £30m by 2008. In each case, discussion between governments was largely conducted on an intra-party basis rather than using the formal mechanisms. The main reason for London's opposition was the danger of spill-over, a point acknowledged by Henry McLeish in his autobiography, "It will inevitably become a theme throughout devolution that a policy created north of the border will engage interest groups in England, who will demand parity" (McLeish 2004, 142).

Three points from both policies are significant. First, neither would have been possible under the old Scottish Office system. While the Scottish Office was able to pursue distinct policies across a range of policy fields, there was no prospect that a UK Government would have permitted different policies such as these pre-devolution. Secondly, each involved an

element of redistributive policy. Paul Peterson, commenting on US federalism, articulated a view that found support amongst many Westminster politicians on these issues: the

“appropriate locus of the redistributive function of government is the inverse of the appropriate locus for most developmental activities. If the national government is the least efficient formulator of developmental policy, it is the most competent agent of redistribution. Local governments are the least capable. State governments are substantially less competent agents of redistribution than the federal government, but they are to be preferred over local governments”. (Peterson 1995, 27)

In other words, these were not deemed matters that ought to come under the ambit of the Scottish Parliament. These ought instead to be the subject not of a dualist model of devolution but an interdependent model in which there was agreement between the two levels on common goals and outcomes. However, the question remains as to the role the devolved government should have in influencing redistributive policies. Thirdly, because there were spill-over consequences, and in the case of care for the elderly London retained important powers in the implementation of elements of the policy, IGR was essential but took on uncooperative features.

McLeish’s aims for devolution proved too ambitious for his Labour colleagues and when some minor, and inadvertent, irregularities in his expenses were uncovered, McLeish had few allies amongst his Labour colleagues at Westminster willing to come to his defence. He was forced to resign in November 2001 after only one year in office. After Jack McConnell succeeded McLeish, the Scottish Executive had more compliant relations with London. This created stability but also contributed to the impression that McConnell was London’s poodle. McConnell made the mistake of assuming that stressing cooperation with London, at the expense of cutting out a distinct role for the devolved institutions, would be popular with the electorate.

The Scottish Parliament has had considerable scope for autonomy in regulatory policies, the public control of private activities in the public interest such as consumer and environmental protection, law and order and social regulation. These include a wide variety of policies but the key aspect is that these are less costly to introduce and implement than distributive policies. The spill-over effects are less direct and have fewer financial implications. The abolition of Section 2A, a measure designed to prohibit the promotion of homosexuality by teaching or publishing material passed by Westminster in 1986, was passed by the Scottish Parliament in 2000. A similar attempt to repeal the measure by Westminster was less successful largely due to opposition in the House of Lords. Another initiative, and one that had its origins in a proposal from an Opposition MSP and initially opposed by the coalition, was for a smoking ban in public places. While the same measure was eventually introduced in England, Scotland led the way in the UK and for a period, rail travellers were allowed to smoke in stations in England before travelling to Scottish destina-

tions but would be breaking the law had they smoked on departing the train at their destination north of the border. Another successful measure that was part distributive and part regulatory and likely to have met strong opposition in the House of Lords was Highland land reform (Laible 2007). The Scottish Executive was more inclined to work with professionals, local government and groups than its Whitehall counterparts who had adopted many of the nostrums of new public management. (Keating 2005, 169-173)

Rising public expenditure from the time devolution was established meant that the scope for autonomy was considerable. Increasing levels of grant opened up scope for different priorities. Yet, the degree of divergence was limited. However, as Labour was in office in London and Edinburgh, there was a reasonable degree of ideological cohesion that ensured that spending priorities largely followed those south of the border. Nonetheless, there were significant distributive and regulatory policy differences in the early years of devolution.

SNP in Government

Two significant changes have occurred since 2007 and each has had an impact on the operation of devolution and IGR – the election of an SNP Government in 2007 in Holyrood and the economic and fiscal crisis. Part of the reason for the SNP's election was that Labour was perceived as insufficiently robust in its relations with London. Evidence from the Scottish Election Study shows that the SNP was seen as a "battler for Scottish interests" while Labour was seen as weak in this regard (Johns et al. 2009, 2010). Being seen as subservient to London, whether or not this perception was accurate, had damaged Labour and will likely affect how any future Scottish Labour Government performs.

The two ideal types – dual and interdependent (both cooperative and uncooperative forms) – remain useful. An adversarial dimension has been added to IGR. This adversarial dimension has operated alongside cooperation and the theatricality of much adversarial IGR should not blind us from the continuing operation of banal cooperative IGR on a range of matters. Much of the cooperation operates away from the media spotlight. Indeed, there appears to be an inverse relationship between media interest and extent of cooperation though even here there are exceptions.

The election of the SNP in 2007 was the first major challenge for Scottish devolution. Relations between London and Edinburgh were tense in the days and weeks after the election. The SNP had "won" the election by becoming the largest party in Holyrood but by only one seat over Labour and were unable to form a coalition. Instead, the SNP formed a Minority Government after the May 2007 elections and many commentators predicted that the SNP would not remain in government for the full four year Parliament. The expectation amongst some Labour MSPs was that Labour would be back in power in Edinburgh by Christmas. Prime Minister Tony

Blair telephoned to congratulate Rhodri Morgan in Wales on the latter's return as Welsh First Minister and Ian Paisley in Northern Ireland on his election as First Minister but pointedly refused to make direct contact with Alex Salmond. Gordon Brown eventually made contact with Salmond. The new Scottish First Minister repeatedly proposed the revival of the formal machinery of IGR to facilitate contact between London and Edinburgh but received no response from London. A month after the election, the UK Government signed an agreement with Libya that agreed the return of prisoners. This was a highly sensitive issue as a Libyan national was imprisoned in Scotland for the Lockerbie Pan-Am bombing in 1988 that had resulted in 270 deaths and the UK Government had failed to abide by a Memorandum of Agreement committing it to consult devolved government on matters in which devolved government had a direct interest. (Memorandum of Agreement 2001, A1. 10)

The tension between the First Minister and Scottish Secretary that had largely been laid to rest after John Reid was replaced by Helen Liddell in 2001 emerged again following the election of the SNP. Des Browne became Scottish Secretary while also Defence Secretary in June 2007 and maintained a low level, partisan battle with the Scottish Government. This was moved up a gear when Jim Murphy became Scottish Secretary in October 2008. The formal institution, purportedly established to facilitate good relations between London and Edinburgh, was becoming a public platform for highly partisan IGR battles. But these adversarial battles were more concerned with attracting media attention than serious policy matters. The first meetings of the plenary session of Joint Ministerial Committee since October 2002 took place in London in June 2008. Chaired by Lord Chancellor Jack Straw, it reviewed its own role and IGR. The joint statement

"reaffirmed that it should have a role, as set out in the Memorandum of Understanding that established it, in helping resolve differences between administrations, and asked officials to investigate ways in which, consistently with the principles in the MoU, it could best do so. The Committee reviewed in the course of its discussion a number of issues raised by administrations: it asked that these should be taken forward between ministers concerned with a view to resolution. It also agreed to work on updating the Memorandum of Understanding under which it was established, to be discussed in the autumn". (Cabinet Office 2009)

But below the surface of adversarial politics, devolution operated much as before. There were some significant differences. First, some issues which had been dealt cooperatively became matters that operated as part of dual devolution. The SNP was keen to widen the scope for autonomy. However, this was limited because of the institutional arrangements of devolution and because the SNP was intent on projecting an image of responsibility. Secondly, a number of matters have become more contentious. The causes of contention have included financial pressures, long-standing pub-

lic policy differences as well as adversarial politics based on electoral competition.

Dual Devolution

Much of the business of Scottish devolution has operated as before. There have been differences with the first phase of devolution. The SNP formed a minority government and policy-making now must take account of Parliament as a whole. It has to engage in constant "majority building" with "patchwork agreements" with "different combinations of parties" in much the same way that minority government operates in Denmark. (Green-Pederson 2001, 56, 58; Mitchell 2008a) Additionally, the parameters within which dual devolution have operated since 2007 have been constrained by cuts in funding while the governing party in Scotland has been ambitious to push out these boundaries. Even before the economic and fiscal crisis, the Scottish Government faced financial constraints imposed by the tightest financial settlement since devolution. While this meant that expensive flagship policies would only be possible at the cost of funding other policies, there remained scope for autonomous action across a range of other matters that involved little or no spending. In justice and health fields, for example, the Scottish Government has pursued policies designed to tackle alcohol abuse that differ from those elsewhere in the UK.

An interesting difference, from an IGR perspective, was the case of police pay. In November 2007, the Police Arbitration Tribunal, a British-wide body, recommended that all ranks of police officer should receive an increase of 2.7% with effect from 1st September 2007. The Scottish Government agreed to implement this while the Home Office decided to introduce the increase from 1st December (see ACAS 115/2007). In effect, the Home Office was offering only 1.9% while the full award was made by the Scottish Government. This did not involve significant additional expenditure in Scotland. Notably, Kenny MacAskill, SNP Justice Minister, was amongst those least likely to seek to exploit differences between London and Edinburgh. This case highlighted the need for UK Ministers to take greater account of a new Scottish Government that would be less willing to follow decisions made by Westminster Ministers. Opportunities for dual devolution to operate where cooperative devolution had previously operated would now exist. The absence of the party political cohesion that had operated in the first phase of devolution opened up opportunities for dual devolution to develop and would be pursued vigorously by the SNP.

Integrative Devolution: I. Cooperative Devolution

A vast swathe of public policy continues to be made cooperatively between devolved and central government. As became clear from early on, the dualist assumptions about devolution soon gave way to recognition, at least amongst politicians involved in the process, that much policy-making involved interactions with different levels of government. The assumption

that SNP Ministers would seek to disrupt such relations with London proved wrong. This misreading of the SNP was common amongst its opponents in Scotland, many of whom privately acknowledged that presenting the SNP in this way had been an electoral tactic to discredit the SNP, and most London commentators (see Mitchell 2008b for a discussion of expectations). Ministers and civil servants were in regular contact over many matters and reached agreement cooperatively after the SNP came to power. While the backdrop of adversarial electoral competition is important, neither government would benefit from creating conflict on every matter. The nature of devolved competences makes cooperation inevitable even, if not especially, when different parties are in power in London and Edinburgh during an economically challenging period.

The Scottish Government, understanding that its election was based on projecting a “responsible” image and avoiding unnecessary conflict with London, has made strenuous efforts to be seen as being constructive. The most notable example has been its use of Legislative Consent Motions (LCMs). Far from ending their use, the SNP Government signalled a willingness to continue passing such motions, seen by many as reversing devolution. In a letter to the Presiding Officer in the Scottish Parliament in November 2007, following the Queen’s Speech at Westminster, Bruce Crawford, SNP Parliament Minister, committed the Scottish Government to “considering proposals for LCMs on a case by case basis”, and stated its belief that the Sewel Convention would remain a “key part of the current constitutional arrangements as long as the United Kingdom Parliament retains its current powers” and identified three UK Bills for which LCMs would be proposed (Crawford 2007).

In addition, everyday interaction between the Governments continues. In evidence to the House of Commons Justice Select Committee in February 2008, Crawford described the “process of continual dialogue” that operated:

“That dialogue happens between officials on an ongoing basis and then between Ministers and between Departments in a bilateral way. Every second week I have a discussion with David Cairns [then Minister of State] at the Scotland Office about where the pinch points are, about where the issues are, and to date these have been resolved amicably.” (Crawford 2008)

As well as much policy that operates under the radar of media attention, there have been instances of cooperation in cases of crises. Three crises since 2007 illustrate the manner in which this cooperation operates at all levels but also illustrates the uneasy adversarial relationship that can also operate in parallel. The terrorist attack on Glasgow Airport in June 2007 led to an emergency meeting of COBRA (the Cabinet Emergency Committee named after the Cabinet Office Briefing Room A) that evening chaired by the Prime Minister and included First Minister Salmond and Justice

Secretary MacAskill. The First Minister was keen to stress cooperation between Scottish and UK Governments as a press statement made clear,

“the incident at Glasgow Airport today as well as recent events in London show that we face threats both north and south of the border – and both the Scottish and UK governments are united in our determination to stand up to that threat to protect our communities.” (Scottish Government Press Statement, 30.06.2007)

Similarly, there was cooperation over the outbreak of foot and mouth. In August 2007, Prime Minister Brown returned early from holiday to Downing Street to chair a meeting of COBRA following an outbreak of foot and mouth disease on a farm on the south coast of England. Though Scottish Ministers were not involved in the COBRA meeting, the Prime Minister held discussions with First Minister Salmond. In May 2009, the first case of swine flu in the UK was diagnosed in Scotland. As well as emergency meetings of the Civil Contingencies Committee, the Scottish Health Minister attended a meeting of the UK Cabinet’s COBRA. The incentives were stacked heavily in favour of cooperation on both sides during these crises.

Interdependent Devolution: II. Uncooperative Devolution

It is uncooperative devolution that has attracted most media attention and there is little doubt that this aspect of devolution has been more in evidence than in the first phase of devolution. The nature of this uncooperative devolution has taken shape against notable developments in party politics and the economy. While there are remarkable similarities in the policies of the SNP and Labour, the SNP has long established policies that differ from Labour’s including financing local government, nuclear weapons and nuclear energy that might impinge on IGR.

In 2007, the SNP campaigned to abolish the council tax used to finance local authority services and replace it with a local income tax. This proved a popular policy that had high salience during the election. However, the costs of introduction would be considerable at a time of tight budgets and there was no majority in Holyrood for the SNP’s version of the policy which would have involved the tax being set at Scottish level at least for a transitional period. The Liberal Democrats supported a local income tax but were emphatically opposed to a measure that would be set at a Scottish, rather than local, level even as a transitional arrangement. The intricacies of devolved finance meant that while the Scottish Parliament is responsible for financing local government, council tax rebates remain the responsibility of the Department for Work and Pensions (DWP) in London. These rebates are given to poorer households to help with council tax bills. Even before the SNP came to power, the Labour Government in London made it clear that if the council tax was abolished, the council tax rebate would no longer be available to poorer households in Scotland. The issue was whether the council tax rebate came under the Scottish block or was a separate matter. In the event, London refused to budge and this was

the reason the SNP gave for abandoning its plans to introduce a local income tax. Henry McLeish entered the debate and argued that while opposed to a local income tax, council tax benefit should be paid to Scotland. (Press Association 11 September 2008)

The issues involved were similar to those surrounding attendance allowance under Henry McLeish's period as First Minister as discussed above. The attendance allowance issue flared up again after the SNP came to power. A review of the care for the elderly policy under Lord Sutherland (who had chaired the initial UK-wide Royal Commission on the subject set up by Tony Blair) was established by the SNP Government after its election. This enquiry concluded that the Scottish Government should receive the attendance allowance that had been withheld,

"while the DWP may have acted to apply the letter of the law ... there is clearly still inequity and the Scottish budget is bearing the brunt of that in terms of £30million a year in lost state benefits. It is clearly contrary to equity that entitlement to attendance allowance has stopped for those in care homes in Scotland, while it continues for those residing in care homes elsewhere in the UK." (Sutherland 2008, 38, para. 103)

London continued to withhold payment and the dispute remains unresolved.

Defence is a retained matter but the SNP's long-standing opposition to nuclear weapons meant that in government it has sought to frustrate British nuclear defence policy, though supportive of non-nuclear defence bases in Scotland. However, devolved powers limit the SNP's abilities to frustrate the policy and activity in this respect has been largely symbolic. However, though energy policy is retained, there are many devolved powers that have a bearing on energy. On coming to power, the SNP discovered that the Scottish Government's capabilities in terms of research and civil service expertise in energy was amongst its weakest areas, despite the Scottish Office's real strengths in these areas in the past. Building up capacity in this area along with economic expertise have been priorities. The SNP had adopted an anti-nuclear position in the 1970s and has stuck with this ever since and in recent years has been a leading proponent of alternative energy sources while the UK Government has been keen on developing its nuclear energy capabilities. This has given rise to some serious tensions over substantive policies resulting in Labour Ministers seeking to roll back devolution in this area.

The Return of the Conservatives

Ten years ago, there was much speculation on how devolution would operate if a Conservative Government was elected while an SNP Government was in power in Edinburgh. Typical of such speculation was a television documentary by George Rosie and newspaper articles in April 1996 which envisaged Michael Portillo, still deemed to be a Thatcherite right-winger, becoming Prime Minister leading to the break-up of the UK (see for example Farquharson 1996). The expectation that a hard-line national-

ist Government in Edinburgh would be in conflict with a hard-line Unionist Government in London has little resonance today. In some respects, this testifies to devolution's success. Few, beyond partisans, see evidence of Rosie's scenario taking shape with the election of a Cameron Government. Nonetheless, devolved government including IGR are likely to undergo significant changes over the next few years for a number of reasons. First, the election of an SNP Government placed further devolution on the political agenda. Secondly, the economic and financial crisis puts pressure on devolution and thirdly, leaving aside constitutional politics, there is likely to be far less policy and ideological agreement between Westminster and Holyrood. These are likely to impact on the three models of devolution discussed above. The SNP's fundamentalist wing has been marginalised and the Conservatives have accepted devolution. But while each party has seen its constitutional hardliners marginalised and each has moved to the centre on other matters, there remain significant differences between these parties that are likely to be exacerbated in the context of the economic and financial crisis.

Three key driving forces that may prove important in any future development of devolution will be the continued electoral threat posed by the SNP, though this threat may recede in significance so long as the party adopts a pragmatic, responsible approach; the Conservatives' desire to avoid being portrayed as anti-devolution and anti-Scottish; and a need to tackle the UK's economic and financial problems. A new Thatcherite approach to public services involving cutting expenditure, increased use of markets in the public sector and privatisation in its various guises will likely have two consequences. First, it will probably provoke a similar backlash in Scotland to that witnessed in the 1980s. Secondly, spending cuts in England will have Barnett consequences and pressure on Scottish budgets. During periods when public expenditure is rising and everyone is a winner, there is less concern for whether one group gets disproportionately more than another. In periods of spending cuts, each group is more conscious of differences ensuring that the politics of territorial finance will become much more contentious than they have been to date. As Gamble has remarked, "Distributional questions always come to the fore in recessions. Once an economy is shrinking, the question of how the reduced income is to be shared out becomes critical". (Gamble 2009, 99)

A number of options are available to the Conservatives and the most obvious and potentially appealing may be to grant Scotland a measure of fiscal autonomy that involves Scotland having some measure of responsibility to raise its own revenues. It is a moot point whether this would involve the devolution of power or the devolution of penury. The form that 'fiscal autonomy' takes will be important but it is conceivable that such changes will move Scotland further along the dual model of devolution discussed here. But even if this happens and there remains an effort on the part of SNP and Conservatives to be responsible and cooperative, there are

likely to be more areas of real policy differences between London and Edinburgh. The role of the other parties in the Scottish Parliament may then become important. The possibility that a neo-nationalist element will emerge again in Labour in Scotland cannot be ruled out.

Conclusion

UK devolution operates within an adversarial culture and media market that is under pressure to present every issue as a damaging conflict but reality is more complex. Much of the everyday business reflects normal politics; crises dealt with well and occasional spats around disputed constitutional differences. Devolution has operated in diverse ways over the last decade, at times conforming to the dual model discussed here and at other times to one of the interdependent models. The key explanatory variable is context. Even more than party politics and the adversarial culture within which it operates, the overall economic and fiscal context giving rise to very different policy prescriptions explain both the establishment of devolution, its early operation in benign times and the more different context that has opened up. But the absence of careful consideration of the implications of interdependent devolution by its founders has contributed to problems.

Devolution had been conceived in dualist terms with very little preparation for its interdependent dimension, a dimension that ought to have been obvious given the emphasis on welfare matters that would be devolved. Conflict is inevitable and was predictable. Indeed, given the motives and expectations behind devolution, it would have been odd had there been none. The issue is not whether conflict, not in itself unhealthy, existed but how it would be managed. As different parties have taken power in London and in Edinburgh, the Scotland Office, the institution putatively designed to facilitate good relations, has had the opposite effect. The real test is only emerging in the context of a much tighter fiscal environment. The UK successfully created new devolved institutions but what has been much slower to develop, at least amongst senior politicians at the centre, has been an equivalent devolved culture. The benign context in which devolution operated is now giving way to a very different, and more challenging period.

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