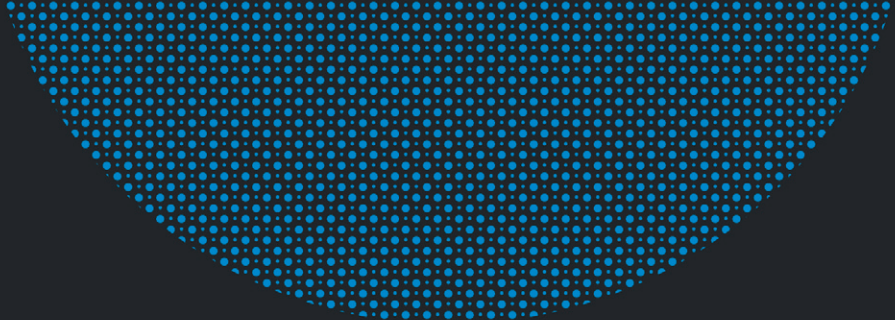


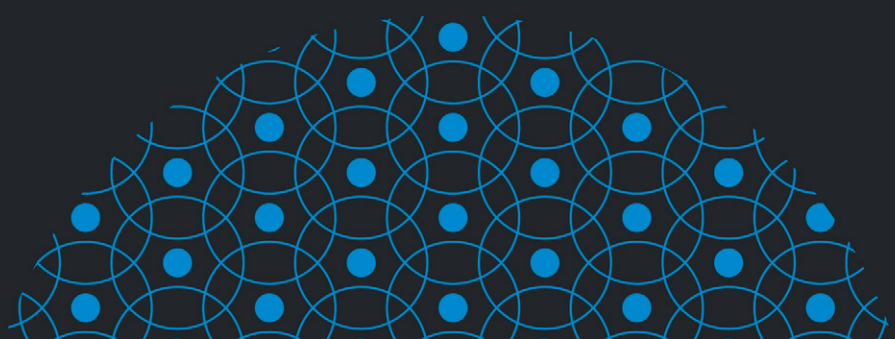


EMERALD POINTS

**INTERPARLIAMENTARY
RELATIONS AND THE
FUTURE OF DEVOLUTION
IN THE UK 1998–2018**

Unravelling Threads?

MARGARET A. ARNOTT



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Unravelling Threads?

BY

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INVESTOR IN PEOPLE

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PREFACE

What do the first 20 years of the devolved legislatures in the United Kingdom tell us about the practice of territorial governance and politics in the United Kingdom? The period has been one of changing relationships between nations and regions in the domestic UK Union. Although a changing dynamic is not a new phenomenon in constitutional and territorial governance, the pace of change has been higher and arguably more evidently enduring in public awareness in the United Kingdom over these 20 years.

Academic debates, and public debates to some extent, on the future governance of the devolved UK and the direction of possible reforms to territorial politics and governance touch on broader theoretical concerns about political and constitutional autonomy of the constituent parts of the multinational domestic union and the practical working of devolution in the apparatus of the UK state. This book does not undertake a comprehensive review of the working and the culture of the legislatures in the devolved UK. It sets out to explore the relationships between legislatures in the first 20 years of the constitutional reforms on devolution. The working of devolution within the domestic UK union is a wide academic and policy debate. This book explores relations between domestic UK legislatures between 1998 and 2018.

The premises that shape constitutional discussions about the future governance of the United Kingdom affect the political debates and narratives about the structure and rationale of the working of devolution. Both the history of civil society and the historical framing of the Union state institutions retain significance in considering the modern territorial governance of the United Kingdom. The shaping of the British state and the United Kingdom following the establishment of Northern Ireland in 1920 are intertwined with ‘nationhood’ and differing forms of nationalism. Each nation of the United Kingdom entered the partnership of the union state on different terms.

The reforms of 1998 were a watershed in the territorial governance of the United Kingdom. The establishment of devolved legislatures marked a clear change in territorial governance, but there also was continuity. The evidence of a less rapid pace of reform in the departmental machinery of government and, perhaps most clearly, in the culture of Westminster has been noted in academic

literature. This book considers how the United Kingdom works as an increasingly heterogenous entity where tensions between the policy directions of the UK state and the devolved nations in the United Kingdom have become more evident in recent years. Policy divergence and the policy capacity of devolved institutions in the devolved administrations and legislatures have underpinned rationales for further constitutional reforms to devolution.

The United Kingdom leaving EU membership in 2020 and the governance of the Covid-19 pandemic post 2020 both brought greater salience to pre-existing potential areas of legislative conflict between the UK Parliament and the devolved legislatures. The devolution ‘settlements’ in the three nations remain far from settled.

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BACKGROUND AND SCOPE

OVERVIEW

This book is largely based on empirical research drawn from two research projects on territorial governance in the devolved United Kingdom. The devolved legislatures are still relatively young political institutions. The first research project was conducted between 2016 and 2020 as a PSA/House of Commons Academic Fellow on UK territorial governance and the working of devolution. One of the emergent findings of this research was that inter-parliamentary relations (IPR) in the devolved United Kingdom was a neglected area of academic study.

The UK leaving EU membership in 2020 surfaced pre-existing potential areas of legislative conflict between the UK Parliament and the devolved Scottish Parliament. The second research project was commissioned by the Institute of Welsh Affairs (IWA) in 2019 on IPR in the devolved United Kingdom between 1998 and 2020. For the IWA research project, IPR is understood to mean ‘the relationships and interactions between UK legislatures: the Houses of Parliament in Westminster, the Scottish Parliament, the Welsh Parliament/Senedd Cymru (formerly the National Assembly for Wales), and the Northern Ireland Assembly’ (IWA, 2019).

For the UK multi-national state, asymmetric devolution offered UK governments a means of responding to differing territorial demands across the United Kingdom (Arnott, 2015, 2016, 2023) and trans governmental networks within the domestic UK union could potentially provide links between legislators. In 1998, the move from administrative devolution in the territorial governance of the multi-national UK state was not a wholesale change to approaches of governance. Following UK exit from the EU in December 2020, however, the recentralization of UK governance, back towards the nexus of

Westminster and Whitehall, has been a growing narrative in the devolved legislatures in Wales and Scotland (Arnott; 2023; Keating, 2022; McEwen, 2022; Morphet, 2021). The UK leaving EU membership in 2020 surfaced pre-existing potential areas of legislative conflict between the UK Parliament and the devolved Scottish Parliament.

In this book, a comprehensive review of the working and the culture of the devolved legislature is not undertaken. Rather, the book focuses on the *changing nature* of territorial governance and explores IPR in the devolved United Kingdom between 1998 and 2020 including the dispersal of power and influence in the interactions between the devolved legislatures and the UK Parliament.

The premise of the book is that the relationships and interactions between any and all UK legislatures have not been static since 1998. Empirical analysis in the book has been directed at three aspects of research related to the issue of IPR:

- (1) existing formal and informal arrangements for IPR between 1998 and 2018;
- (2) the research inquiry of the complexity of the working of devolution;
- (3) the possible implications for cross working of legislatures in the devolved United Kingdom.

The research undertaken during the IWA project explored both the formal and informal working of IPR:

The shifting complexity of devolution arrangements, the political incongruence of the four executives, and the very real consequences of insufficient scrutiny of shared policy areas all indicate that informal and ad hoc arrangements for inter-parliamentary relations are unsustainable.

(IWA, 2019)

The gap in research and academic attention to IPR in the devolved United Kingdom extends across the periods both before and after the country's exit from the European Union. The book considers existing inter-parliamentary literature, together with a series of stakeholder interviews conducted during both research projects to gather UK perspectives on IPR up to 2020. The formal and informal mechanisms existing 'at various levels of each institution, including between Speakers and Presiding Officers, Committees, and officials' (Arnott, 2020; IWA, 2019) have been critically investigated using both the

literature review of primary and secondary academic sources and interviews with key informants at official and political levels.

The nature of IPR in the devolved United Kingdom and the future governance of the domestic UK union have been gaining more interest from both academics and policymakers. The UK Internal Market Act 2020 and the UK common framework are very likely to act as internal UK drivers for further reform to cross legislatures working.

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A BRIEF HISTORY OF DEVOLUTION IN THE MULTI-NATIONAL UK STATE 1998–2020

OVERVIEW

Twenty five years since the establishment of UK-devolved legislatures, there is a significant gap in academic research addressing inter-parliamentary relations (IPR) between the constituent parts of the United Kingdom (Arnott, 2023). Devolution in the late 1990s began as a transition from existing administrative devolution to Northern Ireland, Scotland and Wales to the creation of directly elected legislative and executive devolved administrations and legislatures in each territory. Devolution legislation in 1998 addressed the ‘legitimacy deficit’ in the territorial governance and politics of Scotland and Wales (Bradbury, 2021; Bradbury et al., 2023; Keating, 2022; Wincott et al., 2022). For Northern Ireland since its formation in 1921, it was established with a form of devolution that included a Northern Ireland Civil Service and also substantial areas of domestic policy including justice and home affairs, but this form of devolution ended in 1972 (Aughey & Morrow, 2014; Evans, 2021; Gormley-Heenan & Aughey, 2022; Heenan & Birrell, 2022; Torrance, 2020). A brief period of devolution under the terms of the Sunningdale Agreement 1973–74 then ceased until the 1998 Northern Ireland Act.

Different types of devolution formed the basis of legislation to implement devolution in Northern Ireland, Scotland and Wales in 1998. For Jeffrey and Wincott (2003, p. 6), this is due to the devolved United Kingdom being:

... built on that territorial non-uniformity, embedding a number of idiosyncrasies into the devolved UK state: a lopsidedness that leaves the biggest and wealthiest part of the United Kingdom – England – governed centrally while the non-English nations have devolved

government, devolved government arrangements for those nations that are markedly asymmetrical, and an underdeveloped system of inter-governmental relations connecting United Kingdom – level and devolved political arenas.

The uneven nature of the devolved powers and responsibilities devolved in the United Kingdom sits uneasily with what [Bogdanor \(2019\)](#) calls the ‘myth’ of the United Kingdom as a unitary state where power is held at the centre by the UK legislature and UK government. In the various 1998 Acts introducing devolution legislation, different models were used for Scotland, Wales and Northern Ireland. In Scotland and Northern Ireland, legislative devolution allowed their devolved legislatures law-making powers in areas that had not been reserved to the UK Parliament ([Masterson & Murray, 2022](#)). The ‘executive’ model of devolution introduced in Wales allowed more limited devolved powers than those in the Scotland and Northern Ireland models. The conferred powers model introduced in the 1998 Wales Act ‘limit[ed] the competence of a devolved institution to those powers specifically granted to it in statute’ ([UK Parliament, 2015](#); section 3).

By contrast, in England, power remained highly centralized ([Randall & Casebourne, 2016](#)). In 1998 following a referendum on whether or not to create an elected non-legislative assembly of London, the London Assembly and the post ‘Mayor of London’ were established ([McEwen, 2013](#), pp. 254–255). This was the only directly elected assembly in England. In the 2004 referendum in the North of England on whether or not to set up an elected assembly of the region, devolution was rejected by 78% of those voting.¹ The UK Conservative/Liberal Democrat Coalition (2010–2015) introduced a series of measures to devolve and ‘decentralise power’ to local areas. In November 2014, the first ‘devolution deal’ was agreed between the UK Government and the Greater Manchester Combined Authority ([Sandford, 2023](#)). As argued by Mitchell the unevenness of the powers devolved to the national territories in the United Kingdom reflected ‘the original different unions [that formed the United Kingdom]’ ([Mitchell, 2013](#), p. 3).

SCOTLAND

In the late 1980s, political debates about constitutional reforms asserted that there was a ‘democratic deficit’ in the governance of Scotland in the United

1 North East Referendum 2004 was a postal ballot on establishing a regional elected assembly. Yes 22%; No 78%.

Kingdom. The primacy of popular sovereignty over parliamentary sovereignty was promoted most notably by the Scottish Constitutional Convention (SCC). The SCC Report 'The Claim of Right' (1990) stated:

... our conviction that sovereignty rests with the Scottish people. The very existence of the Convention is a vote of no confidence in the system under which Scotland is presently governed. The concentration of power in Whitehall has created a system insensitive to Scotland's ambitions and hopes. The stubborn survival within Westminster of distinct Scottish legislation has led to frustration rather than strength. Legislation can on occasions be controlled by Ministers who use a safe Westminster majority to secure a programme, which has only minority support in Scotland.
(*Scottish Constitutional Convention, 1990, p. 1*)

There have been two coalition administrations, a minority administration, one majority executive and a return to minority administration in 2016 in the Scottish Parliament. The Scottish National Party has been in power in devolved government since 2007: first as a minority administration 2007–2011, then from May 2011–2016 as a majority government and since 2016 as a minority administration. The party's victory in May 2011 changed the political context of territorial politics and governance in the United Kingdom (Arnott, 2015, 2023; Arnott & Ozga, 2016). It secured 69 of the parliament's 129 seats and made significant electoral gains across all regions of Scotland.

The Scottish National Party (SNP) Government considered that its electoral success in the devolved 2011 election added legitimacy both to its 'project' of securing both enhanced powers for the Scottish Parliament and also to its wider goal of independence. This changing electoral dynamic between Scottish/UK-wide parties led to 'enhanced devolution' in the Scotland Acts 2012 and 2016.

A referendum on independence was held in Scotland on 18 September 2014. A majority of voters (55.3%) were in favour of Scotland retaining its membership of the United Kingdom. On 19 September 2014, the day following the referendum, the then UK Prime Minister David Cameron made commitments for further reforms to Scottish-devolved powers 'in tandem' with reform on 'English votes for English laws' (known as EVEL) in the Commons (Arnott, 2015). The UK Government established a commission on further devolved powers and appointed Lord Smith of Kelvin 'to take forward the proposals made in a joint declaration by the three pro-union parties of more powers for the Scottish Parliament in the event of a 'No' vote' (SPICe Briefing, 2014, p. 9).

The Smith Commission was tasked with proposing recommendations to strengthen the Scottish Parliament in the United Kingdom. One of the most significant areas to emerge was in relation to ‘Principle five’, namely that post-referendum constitutional change should ‘not cause detriment to the UK as a whole nor to any of its constituent parts’ (SPICe Briefing, 2014, p. 9).

The Smith Commission raised issues of transparency between legislatures and governments. A strengthened scrutiny function of IPR was a key recommendation. A Scottish Parliament Briefing Paper summarized the Smith Commission agreement as having:

... considered the issue of inter-governmental relations in some detail. Amongst the recommendations of the Commission was that inter-governmental arrangements to support the devolution of further powers be “underpinned by much stronger and more transparent parliamentary scrutiny.

(SPICe Briefing, 2014, p. 9)

Further that, inter-government relations following enhanced devolution in 1999 should be transparent and accountable to devolved legislatures was recognized across the political spectrum.

WALES

Over the 20 years since the Government Act of Wales in 1998, devolution has progressed from executive to conferred, to reserved powers models via four different Welsh devolution settlements:

... step by step the path to a reasonable and realistic form of representative government in Wales is travelled, but in an arduous and even painful, fashion.

(Hazell, 2000, p. 33)

Rawling argues in 2019 that ‘the constitutional journey’ for Wales:

... in recent years has been characterised by a convoluted and ongoing set of legislative transformations and by the emergence of a distinct policy approach not only for the sub-state policy itself but also under the banner of a ‘new Union’ for the United Kingdom as a whole.

(Rawling, 2019, p. 296)