

# Intergovernmental Relations in Canada and the United Kingdom

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## Overview

While the Canadian and British experiences of intergovernmental relations have one major point in common—they both have parliamentary regimes in which IGR is dominated by relations between the executive branches of the respective governments and are conducted largely in a pragmatic and informal manner, with no constitutional institutions—they differ in myriad and fundamental ways. Canada has evolved over 150 years to become a highly devolved but still essentially symmetrical federation, while the UK, long marked by hyper-centralism, has launched into its highly asymmetric regime that is still young and unsettled in many ways. This chapter sets out the story of each and then elaborates on some similarities and contrasts.

## IGR in Canada

The drafters of the British North America Act in 1867, cautioned by the bloody “war amongst the states” to the south, envisaged a centralized federation with a classic, dualist structure with limited overlap in jurisdictions. In practice, the regional diversity of the country—and especially the unique place of Quebec—have produced a highly decentralized federation in which the federal and provincial governments have been deeply intertwined, with heavy intergovernmental engagement. The depth and range of intergovernmental relations have varied enormously over time. While the federal government has largely determined the agenda, the provinces (and three territories) have increasingly tried to develop common stands in relation to the federal government—their success depending greatly on the subject and their degree of common interest. Canada’s constitution makes only implicit provisions for intergovernmental relations, so the dense institutional arrangements have developed in an ad hoc, informal and pragmatic matter and are more an effect of the political environment than an independent cause. Form follows function.

Canadian federalism reflects the constitution, but also the deeply federal nature of Canadian society. The country is bi-national: Quebec is a distinct, French-speaking society, while other nine provinces and three territories are essentially English-

speaking. But “English Canada” is divided in its ethnic composition, regional history and economic interests. While the central political debate of the last fifty years on the place of Quebec has cooled, other tensions have built up, notably between the strong resource-based provinces and the others. Ontario voters, with almost 40 per cent of the population, are always key in deciding the form of federal governments, while other provinces have had periods with little representation in the governing party’s coalition. Ontario, Manitoba, and the maritime provinces tend to more centralist in their views on the federation, while Quebec, the three Western provinces, and Newfoundland and Labrador (Canada’s other distinct society) are more assertive of provincial autonomy<sup>1</sup>. Federal political parties are now separate from their provincial counterparts. While there are some constants in how provinces approach federal questions—Quebec’s defence of its autonomy and Alberta’s of its resources—within each province, parties often have substantially different positions—the federalist Liberals versus the separatist Parti Quebecois in Quebec being the most dramatic example—so a province’s approach to IGR can shift significantly with a change in government.

Until the 1930s the two orders of government operated quite separately, with limited overlap. However, the depression, the Second World War and then postwar reconstruction all put governments under strain, with the federal government playing the dominant role as interrelations increased, particularly around the creation of the modern welfare state. However, with time the federation has become very decentralized, with federal spending after transfers representing only 30 per cent of all government spending. Federal leadership has declined as provincial (and municipal) governments have become large—and more coordinated in dealing with the federal government.

Construction of the modern Canadian state developed through different phases. The federal government introduced child benefit payments in 1945 and support for a trans-Canada highway in 1949. The constitution was amended to make pensions a concurrent jurisdiction in 1951, leading to old age pensions. Equalization payments to the poorer provinces and a hospital insurance program both started in 1957. The federal government brought in a post-secondary student loan program and an enhanced housing program in 1964. The contributory Canada Pension Plan was started in 1965. Medicare, the universal publicly funded health insurance system, was introduced in 1966. The federal government developed its role in supporting post-secondary research through the National Research Council, and the creation of the Canada Council in 1957 (for humanities and social science) and the Medical

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<sup>1</sup> See Francois Rocher and Miriam Smith, in “The Four Dimensions of Canadian Federalism”, in *idem*, *New Trends in Canadian Federalism*, 2nd ed. (Peterborough, Ontario: Broadview Press, 2003). They suggest that there have been four competing visions of Canadian federalism: equal provinces; equality of national communities; a nationalizing, centralizing vision; and a rights-based vision (underlying the importance of the federal government for equality seeking groups). These streams certainly exist and often co-mingle. While Alberta and Quebec are both strong defenders of provincial autonomy, Quebec traditionally leans to “two nations” while Alberta strong advocates “equality of provinces”.

Research Council in 1969. By the beginning of the 1970s, the federal government was engaged in most areas of the modern welfare state and economic management (primary and secondary education being the main exception) and provided extensive fiscal transfers to the provinces<sup>2</sup>. Since then the federal government has remained engaged in almost all of these areas, though its role has been subject to constant revision.

By far the most dramatic economic issue affecting intergovernmental relations has related to natural resources, especially because changing petroleum production and prices can dramatically influence the balance of economic activity and fiscal capacity of different governments. The second oil price shock in 1979 led to the federal government's extremely contentious National Energy Program, designed to shift petroleum activity and revenues away from Alberta. There were also bruising confrontations regarding control and benefits of petroleum offshore of the Atlantic provinces, given debates regarding their jurisdiction. The 1981 constitutional package somewhat strengthened provincial powers in relation to non-renewable resources, while effectively precluding the possibility of federal export taxes on resource exports.<sup>3</sup>

Federal-provincial-territorial fiscal arrangements are a constant issue and no fiscal architecture ever lasts more than a few years. By 2016, over a quarter of federal spending went to transfers to the provinces and territories—up from just over 10 per cent in 1966 (though federal spending as a percentage of GDP was about half that of the 1960s).<sup>4</sup> While the principle of equalization is embedded in the Constitution of 1982, its implementation has changed dramatically, as have other federal transfers to the provinces (and territories), in terms of their purposes, degree of conditionality and allocation amongst governments. The dramatic rise in petroleum prices and production in the early twenty-first century destabilized the equalization regime as Ontario became a “have-not” province.

From the 1960s to the 1990s the most fraught area of federal-provincial relations was the existential question of the Constitution, which was linked to rising separatist sentiment in Quebec. Serious but unsuccessful discussions started in the 1960s and Prime Minister Trudeau finally forced the issue in 1981, with a proposal that included an entrenched charter of rights. The Supreme Court found his attempt to proceed with the consent of only Ontario and New Brunswick contrary to established convention, which led to further negotiations and revisions that won the consent of all provincial governments except Quebec. Quebec's non-adherence led

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<sup>2</sup> Richard Simeon's classic *Federal-Provincial Diplomacy: The making of recent policy in Canada* (Toronto: University of Toronto Press, 1972) traces the complex stories of pension reform, the federal fiscal arrangements and the constitutional debate in the 1960s.

<sup>3</sup> Robert D. Cairns, Marsha A. Chandler, William D. Moull, “The Resource Amendment (Section 92A) and the Political Economy of Canadian Federalism” *Osgoode Hall Law Journal* 23.2 (1985)

<sup>4</sup> For an overview of fiscal history, see Ben Eisen, Charles Lammam and Feixue Ren, *Are the Provinces Really Shortchanged by Federal Transfers?*, 2016, [www.fraserinstitute.org](http://www.fraserinstitute.org)

to the failed “Quebec round” of constitutional discussions led by Prime Minister Mulroney, and then another failed attempt in 1992—the “Canada round”—when the public overwhelmingly rejected in a referendum the agreement made by First Ministers. After years of fraught constitutional negotiations and these two crushing failures, politicians spoke of “constitutional fatigue” and avoided re-engaging with so little prospect of success, focusing instead on “non-constitutional renewal”.<sup>5</sup>

Intergovernmental relations are driven by politicians, who have their policy and partisan agendas, so they always are engaged in a two-level game<sup>6</sup>. While leaders can sometimes be cooperative working towards a deal, they always mindful of public opinion and there have been moments of major conflict and high drama—perhaps never more than the “damn the torpedoes” approach of Prime Minister Trudeau in the constitutional debates in 1981, when “perhaps nothing (else)... would have broken the log jam”<sup>7</sup>. Relations can degenerate into vituperative combat, more oriented to winning support with respective electorates than to reaching an agreement. MPs in the federal government’s party have sometimes become strong—and public—supporters of demands by their provincial government that the federal government has been resisting.<sup>8</sup>

While Liberal governments have normally had activist agendas with the provinces, Jean Chretien’s Liberal government imposed brutal reductions in fiscal transfers as it addressed federal deficits; however, once fiscal health returned, Chretien and his Liberal successor Paul Martin undertook significant new initiatives with the provinces (child tax credit, support for university research, health care). By contrast, Prime Minister Stephen Harper favoured an agenda of smaller government and federal disengagement from many areas touching provincial responsibilities, while shrinking federal revenues to their lowest level since the 1950s. The new government of Justin Trudeau has large ambitions affecting the provinces. It achieved a major reform of the Canada Pension Plan within its first year and has launched a major infrastructure program. Additional priorities include a new health accord, the legalization of marijuana, reducing interprovincial trade barriers, improving programs for indigenous Canadians, social housing, as well as an aggressive climate change policy, including a national price on carbon—which many provinces will resist, having developed their own plans during the Harper

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<sup>5</sup> Harvey Lazar (ed.), *Non-Constitutional Renewal* (Institute of Intergovernmental Relations: Kingston, 1998)

<sup>6</sup> Robert Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games”, *International Organization*, Vol 42, 1988. Newfoundland has produced outstanding examples: see, Bill Rowe, *Danny Williams: The War with Ottawa*, (Flanker Press: St. John’s, 2010).

<sup>7</sup> Richard Simeon and Ian Robinson, *State, Society and the Development of Canadian Federalism*, (University of Toronto Press: Toronto, 1990), p.299.

<sup>8</sup> Newfoundland has specialized in dramatic confrontations with Ottawa. See Bill Rowe, *Danny Williams: The War with Ottawa*, (Flanker Press: St. John’s, 2010). Two Liberal MPs from Newfoundland voted in favour of a motion condemning their own Prime Minister for an alleged breach of the offshore agreement with the province. p.142

government's inaction. The provinces have made little progress in their attempt to develop a national energy policy.<sup>9</sup>

### *Political Institutions and Forums*

The Canadian constitution says nothing about intergovernmental relations. While representation in the Senate is based on regions, its members are appointed by the federal government, so it has limited legitimacy and no role in federal-provincial relations. All governments are parliamentary so intergovernmental relations are dominated by elected governments—"executive federalism"—with only the most occasional and exceptional role for legislatures.

The apex institution of executive federalism is the First Ministers' meeting, which brings together the heads of the federal, provincial and territorial governments as well as representatives of aboriginal organizations for some purposes. Below these are sectoral ministerial meetings, complemented in turn by meetings of deputy ministers and other civil servants. In 2003 provincial and territorial leaders established the Council of the Federation, which formally institutionalized their regular meetings, where they (and ministers and officials) discuss their positioning relative to the federal policies and develop their own (quite limited) multilateral projects. Provinces have little trouble agreeing on wanting more money from the federal government with fewer strings attached, but their interests don't converge on the allocation of federal transfers amongst them or on some major files, such as interprovincial trade and climate change. The provinces also have regional forums in the West and Atlantic region and can have active bilateral relations, especially with their neighbours.

With increasing intergovernmental meetings in the 1960s, the federal government created the Federal Provincial Relations Office within the Privy Council (Cabinet) Office. There has usually been a federal minister dedicated to federal-provincial relations, but there is none currently, and the size of the FPRO has ranged from well over 100 staff to less than 20, reflecting the agenda of the time. Most provinces have similar internal arrangements, though Premiers often act as their own minister for intergovernmental relations. Quebec and Alberta have highly developed procedures for controlling intergovernmental relations from the centre, which contrasts with some other provinces (and the federal government) that are more selective in the issues that are centrally controlled or monitored.

First Ministers in 1973 established the Canadian Intergovernmental Conference Secretariat to provide logistical, but not substantive, support for IGR meetings. The failed Charlottetown Accord of 1992 would have constitutionalized an obligation to

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<sup>9</sup> Christian Leuprecht, "Go with the Flow: The (Im)plausibility of a Grand Canadian Intergovernmental Bargain on Energy Policy and Strategy", in Loleen Berdahl, Andre Juneau and Carolyn Hughes Tuohy, (eds.), *Regions, Resources and Resiliency*, (McGill-Queen's University Press: Montreal and Kingston, 2015).

have annual meetings of First Ministers. The frequency of First Ministers meetings has fluctuated greatly, peaking in 1985, when there were three, but in most years there is only one—and frequently none (Prime Minister Harper held only three in ten years). Premiers meet more often, but also through conference calls. (Ministerial meetings has been typically in the range of 30 to 50, but with a peak of 59 and a trough of 8 since the mid-70s.)<sup>10</sup>

The constitutional debates excited huge interest, so parts of the First Ministers meetings were open to the media; moreover, there was real bargaining at the table and in back corridors. However, these public events greatly raised the political stakes and sometimes pitted the federal prime minister against the rest; it was difficult to negotiate before the cameras. Prime Minister Chretien adopted a very low-key approach to First Ministers meetings—calling them once deals were ready to sign and limiting them to a private dinner and morning session, followed by a press conference. Prime Minister Martin was more forthcoming and called a First Ministers meeting on health care before a deal was done, though he had to significantly enrich his offer during the meeting to claim success. Prime Minister Harper even kept one meeting to a non-substantive dinner.<sup>11</sup>

It is inevitable that First Ministers lead on major constitutional issues, but they rely more on line ministers and officials for normal business. When necessary to help move a sectoral file, First Ministers can meet bilaterally or talk on the phone. Prime Minister Chretien invited provincial leaders on his trade missions, which proved congenial and permitted discussions without pressure to announce deals. Prime Minister Justin Trudeau met the Premiers on climate change four months after assuming office and he promises regular meetings with them, which is consistent with his government’s agenda. He had earlier invited Premiers, indigenous leaders and some mayors to join him at the opening session of the UN’s climate change conference in Paris.

### *Making Policy*

While one or more provinces can sometimes push the national agenda—the recent agreement on pension reform followed Ontario’s threat to proceed with its own supplementary plan—in general the federal government leads in shaping the agenda of IGR. Its fiscal role, strong convoking power and centrality as a national newsmaker give it advantages no province—or even the provinces collectively—can have. However, it must consider how it might achieve an aim—whether by

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<sup>10</sup> Data from spreadsheet CICS Conferences 1969-2015, Canadian Intergovernmental Conference Secretariat.

<sup>11</sup> Martin Papillon and Richard Simeon, “The Weakest Link? First Ministers’ Conferences in Canadian Intergovernmental Relations”, in J. Peter Meekison, Hamish Telford and Harvey Lazar (eds.), *Reconsidering the Institutions of Canadian Federalism*, (McGill-Queen’s University Press: Montreal and Kingston, 2004).

agreement, or an imposed arrangement; its choice may depend on its legal jurisdiction or the financial incentives at its disposal.

The original BNA Act envisaged that the federal government could intervene when necessary in areas of provincial jurisdiction, but the federal powers of “peace, order and good government”, to disallow a provincial law, and to declare a work to be of federal interest have fallen in desuetude, and there is nothing comparable in Canada to the supremacy, pre-emption, or commerce clause in the United States, which gives the US government almost limitless ability to intervene in state matters.<sup>12</sup> Thus the federal government has been very constrained in working with the provinces to reduce internal trade barriers. Furthermore, while the federal government can enter international treaties on its own, it does not have the power of the Australian parliament to impose treaty provisions on provinces so the provinces increasingly join trade negotiations touching their jurisdictions<sup>13</sup>. Sometimes, to get an international deal, the federal government must consider a side payment to a province—for example, a possible \$400 million to Newfoundland in exchange for its losing the right to require fish processing in the province in the Canada Europe Free Trade Agreement.

Unlike “integrated” federations, Canada has few areas of concurrency (agriculture, immigration and pensions) and even where concurrency does apply federal laws are not administered by the provinces, unless by agreement. (Criminal law uniquely is a federal jurisdiction that is provincially administered.) Pensions has been a concurrent jurisdiction since 1951, but the provinces have paramountcy, which has led to a unique arrangement whereby changes to the Canada Pension Plan (and the parallel Quebec Pension Plan) require the approval of the federal government and two thirds of the provinces representing two thirds of the population<sup>14</sup>.

As a practical matter federal and provincial jurisdictions can overlap when each has a head of power that permits legislating on the same subject. Thus environment is not mentioned in the constitution, but provinces can use several powers (natural resources, property and civil rights, municipalities) while the federal government can use of others (criminal law, fisheries, navigation, interprovincial and international transport) to legislate on the environment. Both orders of government also have taxing powers that can be used for environmental purposes and they can attach environmental conditions to their spending, all of which requires dialogue

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<sup>12</sup> See William Dymond and Monique Moreau, “Canada”, in George Anderson (ed.) *Internal Markets and Multi-Level Governance* (Don Mills, Ont: Oxford University Press, 2012).

<sup>13</sup> At the explicit request of the European Union, the provinces were at the table in the free trade negotiations with it because of their importance in the EU’s “ask; by contrast, the “sovereign” member states of the EU were not at the table. However, India would not accept this for its states in the free trade negotiations with Canada and so the provinces were excluded to avoid an invidious comparison.

<sup>14</sup> Bruce Little, *Fixing the Future: How Canada’s Usually Fractious Worked Together to Rescue the Canada Pension Plan* (University of Toronto Press: Toronto, 2008). This formula effectively gives Ontario a veto, while Quebec retains control of its separate, but coordinated, plan.

about coordinating policies and programs. The federal government has delegated the administration of some environmental regulations to the provinces. However, when there is no agreement each order of government is free to pass its own laws—which in the case of the environment means that the more stringent regulations would apply.

Climate change is very contentious in current federal-provincial relations. The federal government has the authority to impose a national carbon price but will make every effort to build a coalition, if not unanimity, with the provinces before proceeding. Federal governments sometimes use their legal powers to impose an arrangement on the provinces (the previous Trudeau government's National Energy Plan was a controversial example), but they have also been frustrated in trying to do so by the courts, as when the Supreme Court found the Harper government's proposed federal securities regulatory regime to be unconstitutional. Even when its legal authority is clear (as in questions of inter-provincial water management<sup>15</sup>) the federal government can defer to the provinces—usually because politically it sees no advantage in engaging on a divisive issue.

Many significant federal-provincial initiatives relate to social programming. The federal government may act directly with individuals through grants, loans or tax benefits—loans to PSE students, the old family allowance, and the current Canada Child Benefit—but these can require discussion and possible coordination regarding their interaction with provincial programs. More controversially, federal governments have extensively used the spending power to induce the provinces to create national programs relating to health, post-secondary education, social services and social assistance—almost two-thirds of federal transfers to the provinces and territories have been in this area. The federal government typically offered quite generous initial cost-sharing arrangements along with detailed conditions for a provincial program to qualify. Quebec traditionally objected that the spending power was illegitimate when used in areas of its legislative jurisdiction, but the better view seems to be that both orders of government can spend on any object.

Over time the provinces have become more chary about the federal use of its spending power because federal financial support often declined once programs were established. This happened with a vengeance in 1995 when the federal government unilaterally made dramatic cuts in its three major social transfers, while abolishing some of the conditionality associated with them. This highlighted the issue of the spending power, so in 1999 the federal government concluded the Social Union Framework Agreement with nine provinces (excluding Quebec): this recognizes the spending power's importance in the creation of Canada's social union, but introduces new procedures of consultation on federal social spending

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<sup>15</sup> J. Owen Saunders, "Managing water in a federal state: the Canadian experience", in Dustin Garrick, George R. M. Anderson, Daniel Connell and Jamie Pittock (eds.), *Federal Rivers: Managing Water in Multi-Layered Political Systems*, (Edward Elgar: Cheltenham, UK, 2014)

initiatives, notably not to introduce new Canada-wide conditional transfers without the agreement of a majority of the provinces and to consult with the provinces for at least one year prior to major changes. Not yet tested, this procedure could be important if the federal government pursues a pharmacare programme. This and the voting procedure pensions are the unique cases of weighted majority voting in Canadian IGR—which is thus far less extensive than such voting in the European Union.

### *Implementing Arrangements*

While the federal government may require the cooperation of the provinces for certain major new initiatives, it has wide freedom to change fiscal arrangements without provincial consent. This was demonstrated by the Chretien government's cuts to transfers in 1995 and the unilateral decision of the Harper government on the new five-year framework for major transfers in 2011. Agreements between governments are essentially political. In 1991 the Supreme Court found that the agreement on the Canada Assistance Plan was not legally enforceable (the federal government had unilaterally reduced payments it had agreed to) and most intergovernmental agreements not legally binding, in part because of the doctrine that parliament cannot bind its successors.<sup>16</sup> The arrangements between the federal and provincial governments are captured in an estimated 1000-2000 documents. Quebec and Alberta have formal internal procedures for approving all such agreements, but this is not true in other provinces and there is no standard form or status for such agreements.

The Canadian constitution does not permit the delegation of legislative powers from one order of government to the other, but it does allow delegation of administration, which is extensively done. Most frequently this is from the federal government to the provinces, as in much environmental regulation, but it can also work in the other direction, as with taxation. Both orders of government have extensive and overlapping taxing powers, but most provinces have delegated much tax administration to the Canada Revenue Agency (which has a jointly appointed advisory board), partly because the federal government charges no fee for collecting the provincial taxes: this has permitted major savings to provincial governments and to taxpayers (facing lower compliance burdens) while providing for a more coherent tax regime, most recently in the creation of the harmonized sales tax (VAT) between the federal government and most provinces.

Very creative joint agency structures were developed for the administration of petroleum activities offshore Newfoundland and Nova Scotia. While technically under federal constitutional jurisdiction, the provinces have passed their own

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<sup>16</sup> Johanne Poirier, "Intergovernmental Agreements in Canada: At the Crossroads between Law and Politics", in Harvey Lazar and Hamish Telford (eds.), *The State of the Federation 2001-2002*, (Kingston: McGill-Queen's University Press, 2003).

“mirror legislation” and they play an equal role in naming the board members and have veto powers over certain major decisions<sup>17</sup>.

While the provinces are typically jealous of their jurisdiction in the health area, they have joined the federal government in setting up a cluster of agencies in areas of common interest: the Canadian Institute of Health Information (over 700 staff); the Canadian Agency for Drugs and Technology in Health (130); the Canadian Health Infoway (150); and, the Canadian Patient Safety Institute (38). The provinces have the majority on the boards of these agencies, while the federal government is the biggest payer. The provinces were angered by the Harper government’s unilateral decision on fiscal arrangements in 2011, so they excluded the federal government (which administers health care for aboriginals and veterans) from the pan-Canadian drug procurement arrangement they developed, which have saved hundreds of millions of dollars annually; they finally admitted the federal government in 2016, after the Liberals were elected.<sup>18</sup>

The federal government has been excluded from any role in primary and secondary education (except for aboriginals), but the provinces have long cooperated through the Council of Ministers of Education, which has over 60 staff. It has some research capacity and reports on education indicators and represents the provinces in international meetings relating to education. The federal government funded for a few years the Canadian Council on Learning, but the Harper government shut it down; its former chair argues that Canada’s lack of intergovernmental coordination is undercutting its educational performance.<sup>19</sup>

Quebec often stays out of arrangements between the federal government and the other provinces, though it may negotiate special deals. While there is no asymmetry in constitutional powers, the Canadian system is open to asymmetrical administrative arrangements. Thus Quebec has not delegated any tax collection to the federal government—and the federal government actually delegated to Quebec the collection of the federal goods and services tax to get an agreement on a harmonized sales tax. Quebec is particularly punctilious in how it accepts funds from the federal government in areas that it deems to be its exclusive jurisdiction.

### IGR in the UK

Intergovernmental relations came as a surprise to Britain. Long a notoriously centralised state, it embraced devolution to Scotland and Wales in 1999, but meaningful and effective intergovernmental relations have taken longer to emerge.

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<sup>17</sup> Andre Plourde, “Canada”, in George Anderson (ed.), *Oil and Gas in Federal Systems*, (Oxford University Press: Don Mills, Ontario, 2012)

<sup>18</sup> <http://www.pmprovinceterritoires.ca/en/initiatives/358-pan-canadian-pharmaceutical-alliance>

<sup>19</sup> Paul Cappon, *Think Nationally, Act Locally: A Pan-Canadian Strategy for Education and Training*, Canadian Council of Chief Executives, 2014, [www.ceocouncil.ca/skills](http://www.ceocouncil.ca/skills)

They remain a work in progress, because they relate only to 15% of the UK's population and because 17 years later, the relative roles of the devolved administrations and central government remain in a state of flux.

The United Kingdom of Great Britain and Northern Ireland, of course, had more than one domestic government and legislature for much longer. From the partition of Ireland in 1923 until the imposition of direct rule in 1972, the Stormont Parliament and government in Belfast exercised unusually wide domestic powers. It was the child of the home rule debates for the island of Ireland, which convulsed British politics for much of the 19th century, but was confined to the six counties of Northern Ireland after partition<sup>20</sup>. The Stormont administration dealt with virtually all domestic matters (other than taxation) and left issues like defence and foreign affairs (described, to modernise eyes quaintly, as "Imperial") to Parliament at Westminster. Northern Ireland was represented there as well, but the number of MPs was discounted to take account of the extensive devolution. This was the plan Gladstone finally settled on to remove the stranglehold Irish MPs had on parliamentary business: it was carried over unchanged for a much smaller number of members<sup>21</sup>.

These two UK governments, however, had little in the way of intergovernmental interaction. Stormont was largely autonomous on domestic policy, albeit funded as today substantially by the UK Treasury. The mooted "Imperial contribution" towards defence and foreign affairs was always in effect negative<sup>22</sup>. Westminster and Whitehall were happy to forget about Northern Ireland, and leave it to march to its own drum. Its domestic politics were primarily about the maintenance of a Protestant hegemony in a mixed community. The consequences finally boiled over in the 1960s and 70s, and the UK government's concern since then has been the maintenance of peace and development of a functioning political system in Northern Ireland, rather than intergovernmental relations on day-to-day matters. Relationships concerning the Northern Ireland peace process were bilateral before Scottish and Welsh devolution and have remained so since. Successive UK governments, from Prime Minister Heath through to Prime Minister Cameron, have devoted enormous effort to creating, sustaining or restarting devolved government in Northern Ireland, which are not described here<sup>23</sup>. This chapter will ignore the

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<sup>20</sup> Ronan Fanning, *Fatal Path: British government and Irish revolution 1910-1922*, (Faber, London: 2013)

<sup>21</sup> J Gallagher and I McLean, *Nationalists at Westminster: Ireland and Scotland a Century Apart* at [https://www.nuffield.ox.ac.uk/Research/Politics\\_Group/Working\\_papers/Documents/Nationalists-at-Westminster-GG01-2015.pdf](https://www.nuffield.ox.ac.uk/Research/Politics_Group/Working_papers/Documents/Nationalists-at-Westminster-GG01-2015.pdf)

<sup>22</sup> Vernon Bogdanor, *Devolution in the United Kingdom*, (Oxford University Press: Oxford, 1998)

<sup>23</sup> Jonathan Powell, *Great Hatred, Little Room: Making Peace in Northern Ireland*, (Vintage Books: London, 2008)

various suspensions of devolved government, and deal only with Northern Ireland to the extent its government is a player in the UK's wider IGR.

### *Path Dependence: IGR and Devolution's backstory*

The new era for British IGR began in 1999 when Tony Blair's Labour government created a Scottish Parliament and Welsh Assembly, each with legislative and executive powers. Both however have political and administrative back-stories, which influence them profoundly. Scottish home rule, or independence, has its roots in the union of 1707. That union did not incorporate Scotland into the institutions of the English state wholeheartedly: although the parliaments of the two nations (England and Wales and Scotland at this point) were merged, Scotland retained cultural and institutional difference. Most notably it retained a national church, different in tone and doctrine from the Anglican Church, a distinctive educational system and an independent legal system. It was always differently administered – by an all-powerful Lord Advocate in the 18th-century, and a Secretary for Scotland from the 19<sup>th</sup><sup>24</sup>. By the end of the 20th century the Secretary of State for Scotland was responsible for the majority of Scottish domestic policy and public services (tax and welfare being the main exceptions). Devolution in 1999, therefore, was in a sense simply adding a directly elected Scottish legislature to an existing government machine, itself deeply embedded in the UK government and civil service. Analogously in Wales, the Secretary of State for Wales and the Welsh Office grew up as an administrative recognition of Welsh identity, though later (1965) and with narrower powers, and became the core of the Welsh Assembly and its government. This administrative inheritance has deeply shaped IGR, for good and ill. They started from, and still have some of the feel of, departments of the same government talking to one another.

Path dependence is also seen, however, in the political back-story of devolution, notably in Scotland. Home rule was the Liberal Party's answer to demands for Irish independence, though put into effect only in Northern Ireland. But it was also contemplated as "home rule all round" for all the nations of the UK. This policy was shared by the Labour Party in the 1920s, but was pursued seriously by neither party until the 1970s. Indeed the Labour Party struggled to see how its historic commitment to home rule could be reconciled with its belief in social solidarity across the whole UK for working people. What changed things, of course, was the advent of Scottish nationalism. It grew from a fringe movement in the early 20<sup>th</sup> century to a major political force in the 1970s, fuelled by offshore hydrocarbons,

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<sup>24</sup> Colin Kidd, *Union and Unionisms: Political Thought in Scotland 1500-2000* Cambridge University Press: Cambridge, 2008); J.S. Gibson, *The Thistle and the Crown: a History of the Scottish Office* (HMSO: Edinburgh, 1985)

and the slogan "it's Scotland's oil"<sup>25</sup>. Labour proposed devolution for Scotland and Wales in 1978, plans that were derailed after only half-hearted support in a referendum. But then after 15 years of Mrs's Thatcher's government, Tony Blair in 1997 accepted devolution as the "settled will" of Scotland, as the substantial majority in the referendum then showed. Wales was pulled along in Scotland's devolutionary slipstream. But creating a Scottish Parliament did not as one Labour politician unwisely forecast kill nationalism "stone dead": instead it gave nationalists a role in domestic politics, and an opportunity in due course to become a government. As a result, for Scotland, intergovernmental relations have been dominated by the independence question, and this affects the whole system.

One further background factor substantially conditioning UK intergovernmental relations in is the nature of the UK constitution. It is neither codified, nor federal, although much of it is written down and it shares many characteristics with federal states. Legislation allocates powers to the devolved legislatures, but it does not (as a federal constitution would) constrain the legislative powers of Parliament at Westminster. So there are substantial legislative overlaps between devolved legislative competence and Westminster, which retains the formal capability to legislate on any matter, whether devolved or not<sup>26</sup>. By contrast, UK ministers have lost any legal powers to act on devolved matters<sup>27</sup>. And because the constitution is not a federal one, devolution and hence IGR matter only to 15% of the UK population. Westminster and the UK government may be like federal central institutions for the devolved nations, but they remain a unitary government for England, which has the overwhelming proportion of the UK population. This deep asymmetry has deep consequences. It is easy to see intergovernmental relations as essentially peripheral to the core business of the UK government. A final conditioning constitutional fact is that although the devolved administrations exercise broadly the same responsibilities, there are important differences of detail. The legal basis of the devolution of powers to the Scottish Parliament and the Welsh Assembly differs, as does the boundary of their responsibilities. Northern Ireland is different again, although formally it has even wider powers, reflecting its inheritance from Gladstonian home rule. So the constitutional arrangements militate against wholly uniform intergovernmental relations across the whole UK, and even for the three devolved nations. Add to this the different political backgrounds – the continuing issues of the Irish peace process, the apparently endless debates about Scottish independence, and the struggle to define a

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<sup>25</sup> McLean, I, Gallagher, J and Lodge, G, *Scotland's Choices* (Edinburgh University Press. 2014)

<sup>26</sup> By convention (the "Sewel" Convention, named after the Minister who first enunciated it) Westminster does not legislate on devolved matters without devolved consent. For Scotland, this was made the subject of a legislative declaration in the Scotland Act 2016.

<sup>27</sup> Legislative delegation is unknown in Canada but has been possible in the UK – eg in the delegation of powers to the Scottish parliament to legislate for the 2014 independence referendum. Administrative delegation, though legally possible, is common in Canada but virtually unknown, in the UK.

sustainable model for Welsh devolution – and the scope for routine or systematic processes of intergovernmental relations is understandably smaller.

### *Joint Ministerial Committees and Other Forums*

Nevertheless in 1999 with devolution to Scotland and Wales it was recognised that a framework for intergovernmental relations was needed. A formal “Memorandum of Understanding” between the governments established joint ministerial committees, comprising UK and devolved Ministers from all three administrations. A plenary joint ministerial committee was to be chaired by the PM or his representative, and there was provision for different subcommittees. Although these were new, they had the look and feel of the UK Cabinet subcommittees, which in a sense they replaced. The committees were serviced by the UK Cabinet Office, with devolved support, met in some of the same rooms, with the same style of papers and discussion. (Indeed some Labour politicians initially saw them as simply a continuation of the Cabinet subcommittees that they then sat on; this idea was swiftly and properly sat upon.) This didn't last long. Politicians of the same political parties in government in London, Cardiff and Edinburgh preferred to deal with issues informally. Officials struggled to find meat for the committees to chew on, UK Ministers saw no point in them, and they fell into disuse between 2001 and 2007. The one committee that did continue to operate was the joint ministerial committee on Europe, which was the direct descendant of the Cabinet subcommittee on developing UK negotiating positions on issues in Brussels. It had a job, and continued to do it<sup>28</sup>.

Another notable piece of path dependence was the continuing relationship between the devolved administrations (especially Scotland) and the UK government in the formulation of the UK legislative programme. Remarkably, this is still shared in advance, in confidence, so that any issues about the boundary between reserved and devolved matters can be sorted out. Often there will be good practical sense in allowing Westminster to legislate with agreement on a devolved matter, alongside parallel legislation affecting England, or in consequence of it. Sometimes these have been quite major pieces of legislation (for example an integrated approach to pursuing the proceeds of drug and other crimes in the Proceeds of Crime Act 2002) though on other occasions they concern relatively small consequential changes in devolved matters. This is exactly what happened before devolution inside government and contrasts with Canadian experience.

So for the first eight years of devolution intergovernmental relations were low key and effectively intra-party. This changed in 2007 with the election of an SNP administration in Edinburgh, so that Labour no longer governed in both

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<sup>28</sup> For a more detailed account of the operation of these committees see J. Gallagher, “Intergovernmental relations in the UK: Cooperation, competition and constitutional change”, *British Journal of Politics and International Relations*, vol14, issue 2, May 2012, Wiley, London

Westminster and Edinburgh—and when the Northern Ireland Executive was once again in operation. Attempts were made to give revive the joint ministerial committees, with a plenary session and a main subcommittee to deal with day-to-day business. This continues and the most recent indications are that these institutions still operate, albeit on an infrequent basis. In 2012-13 for example, the plenary joint ministerial committee and the "domestic" subcommittee both met once, while the European sub-committee met five times to discuss a range of day-to-day European issues. However, the plenary committee did not meet at all under the present UK Conservative government until after the European referendum. ( Since then there has been one Plenary JMC and one of a new Committee on leaving the EU. Both meetings have been fractious.) When they do meet, the committees provide an opportunity to discuss policy questions, but also to raise issues of concern or dispute. The dispute resolution procedure essentially consists of continued discussion: there is no authoritative referee on intergovernmental disputes (although the courts can resolve issues of competence on legislation or the exercise of devolved ministerial powers). The ministerial committees are supported by shadow official committees of civil servants from the different administrations. It might seem surprising that public business is not hampered by the absence of more frequent meetings. There are two reasons for this. First, there is a great deal of day-to-day official cooperation, usually bilateral, on relatively low salience issues, just as before devolution. And secondly, the boundaries of the devolution settlement were developed from the pre-existing administrative boundaries, which had evolved to minimise spillovers and clashes. The devolved administrations therefore inherited those good fences which are said to make good neighbours.

One very important area of intergovernmental working is not covered in the joint ministerial committees at all: finance. Her Majesty's Treasury operates a parallel arrangement under which the finance ministers of the devolved administrations and the chief secretary to the have regular meetings of what is described as a finance minister's quadrilateral. This discusses a range of financial issues, but all of them in the context of the pre-existing devolved financial arrangements so they are substantially path-dependent. The UK government is the largest source of finance for the large programs run by the devolved administrations (e.g. 60% of public expenditure in Scotland is the responsibility of the Scottish government), and most of this is calculated by the well-known, but little understood, mechanism of the Barnett formula. Barnett operated from 1978 until devolution in 1999. It was designed to allocate resources inside government, and was thought at the time to be a temporary measure. Instead it has become ingrained in the UK's territorial constitution.

Barnett is very simple. It operates on the assumption that the devolved governments, like government departments in the UK, have existing and forward budgets ("baselines") for their spending programmes. As each those budgets is reviewed for UK departments, similar population-based adjustments are made to the equivalent devolved budgets. So if the education budget in England is increased by, say, £1 billion. The Scottish budget Welsh budget and Northern Irish budget,

each increased by a population share of that £1 billion. The devolved governments (like the territorial departments before them) have discretion how to spend the total thus arrived at<sup>29</sup>. This was a practical method of dealing with issues inside government, but it has no obvious relation to any measure of needs. It is arguably a rough and ready way of ensuring that when the UK government allocates resources to spending programmes, it bears in mind Scotland, Wales and Northern Ireland as well as England. For political reasons the Barnett formula is very hard to change, largely because it has turned out to be advantageous to Scotland. Barnett is not based on measures of spending need, but has real practical advantages of simplicity and predictability. It has given the devolved administrations complete spending freedom, which means that UK IGR have been spared the tensions in some federal systems over the earmarking of resources by central government. Conversely it means that central government has no say whatsoever over devolved spending, in contrast with Canada.

The main issues discussed in the finance ministers' quadrilateral have been the detailed calculation of the Barnett formula. There is surprisingly little scope for disagreement, although the Welsh Assembly government pursued a grievance for many years that public expenditure on the Olympic Games held in London should have been regarded as English expenditure – and thus produced consequential for Wales – and not UK wide expenditure. Barnett is changing for Scotland at least (and possibly to a degree for Northern Ireland) as a result of the introduction of devolved tax powers. It is very striking that the Scottish government fought very hard to keep every advantage of Barnett in the complex negotiations to implement income tax devolution for Scotland.

### *Bilateral Relations with the Devolved Governments*

For each of Northern Ireland, Wales and Scotland, however, much intergovernmental business has been conducted bilaterally and in different ways. This is most obvious in the development of each devolution settlement. The Northern Ireland settlement is subject to internal challenge, as the peace process set up after the Good Friday agreement of 1998 works its way through domestic politics. Stumbles have included the suspension of the institutions before 2007, though major step forward, for example, was the devolution of justice and policing in 2012. The most recent "Fresh Start" into the devolution settlements was as recent as November 2015. Understandably, such changes are not dealt with through multilateral IGR.

Devolution in Wales has gone through a number of iterations, none so far wholly satisfactory. The 1999 legislation was during its Parliamentary process from a

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<sup>29</sup> See J. Gallagher, *Algebra and the constitution, the fiscal framework of the Scotland Bill* at <https://www.nuffield.ox.ac.uk/Research/Politics%20Group/Working%20papers/Documents/Gallagher%20WP%20-%20Algebra%20and%20the%20Constitution.pdf> 2012

model with an Assembly that was more like a local authority with collective corporate responsibility for running services to one with an executive within it. Further legislation in 2006 clarified that distinction, while creating a complex process for gradual extension of the Assembly's legislative powers – by means of Orders that had to be approved in both London and Cardiff. In practice this was like drawing teeth. The same legislation also provided for the possibility of more thoroughgoing legislative devolution after another referendum (Wales's 3rd since 1997) and this has been approved, though legislation is still in progress to better define the devolved-reserved boundary – making it more like Scotland's, under which matters are devolved unless explicitly reserved. This complex and messy process has been entirely bilateral, directly negotiated between the UK and Welsh governments.<sup>30</sup>

The further development of Scotland's devolution settlement has also been bilateral, partly a matter of intergovernmental relations, and partly a matter of high politics. After the election of a minority SNP administration in 2007, the UK government (and the majority pro-UK parties in the Holyrood parliament) created the Calman Commission on Scottish devolution<sup>31</sup>, which recommended tax powers for the Scottish parliament. These were based on Canadian experience, and involved sharing the Scottish income tax base between the UK and Scottish governments. The intergovernmental processes in which this deal was done were partly bilateral negotiation, and partly political brinkmanship; eventually, the tax powers were enacted in 2012 with the agreement of the Holyrood Parliament, and came into effect in 2016. (Interestingly, Calman also recommended extensive improvements to intergovernmental relations, but these have been largely ignored.) The election of a majority SNP administration in 2011 led to the Scottish independence referendum in which separation was rejected. This was followed by the Smith Commission, which considered yet further devolved powers, including the more or less complete devolution of income tax. The Smith commission was a negotiation between the all the UK political parties (including the SNP), with administrative support provided by the UK government. The detailed implementation was subject to bilateral negotiation between governments. The scrutiny and approval of this and earlier constitutional legislation is virtually the only area in which legislatures in the UK have been involved in intergovernmental negotiations.

### *Patterns and Prospects*

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<sup>30</sup> R. Wynn Jones and R. Scully, *Wales says Yes: Devolution and the 2011 Welsh Referendum*, (University of Wales Press: Cardiff, 2012)

<sup>31</sup> Sir Kenneth Calman, *Serving Scotland Better: Scotland and the United Kingdom in the 21<sup>st</sup>-century* at [www.commissiononscottishdevolution.org.uk](http://www.commissiononscottishdevolution.org.uk). 2008

It will be seen, overall, that the ideal of intergovernmental machinery in the UK is still finding its feet. It is heavily path-dependent, and very politically contingent. All three devolution settlements are, for different reasons, subject to change, and except in times of high politics can be peripheral to the UK government's main interests. Nor is IGR well integrated. Each of the devolved administrations has very particular issues it wishes to pursue bilaterally. Finance is dealt with in quite a separate stream, largely because of the British Treasury's self-image as an independent power in government, still dealing with the devolved administrations in the much the same way it did when they were government departments.

One major change however is over the horizon. As the UK plans to leave the European Union, the machinery of intergovernmental relations will inevitably change, both during the exit negotiations and subsequently. Powers will come from Brussels to London, but to Edinburgh, Belfast and Cardiff too. Areas such as agriculture, fishing and environmental protection are already devolved, and are uniform across the UK only by virtue of EU rules. While the government at Westminster might be tempted arrogate to itself the powers currently exercised by Brussels, this would breach the constitutional conventions regarding the devolution agreements. So Brexit is likely to mean that the devolved administrations existing powers over policies like agriculture, fisheries, environmental protection are enhanced—potentially quite significantly. It will be necessary for the devolved administrations and the UK government to work out arrangements, for example, over access and management of fishing grounds and environmental protection. This will require intergovernmental discussions in which the UK government will have to bargain to get agreement.

### Similarities and Contrasts

#### *Similarities*

Politics is politics in both Canada and the UK, so countries experience conflict and political competition along with quotidian cooperation. Political conflicts are inevitable: they must be dealt with by politicians, but politicians also need them. Some of the conflicts are structural—notably about fiscal matters, whether transfer arrangements or sharing petroleum revenues in Canada or the Barnett formula in the UK. Others are about deeper political and constitutional differences—the stories of Québec, or Scotland or indeed Northern Ireland. While still others are the daily meals of political competition as parties distinguish themselves nationally or regionally. The strength and nature of major conflicts varies over time as issues arise and are resolved. This is most obvious in Canada, with its much longer history. The central issues of intergovernmental relations have changed dramatically according to such contextual factors as the depression, war or building of the welfare state, as well as the more regional issues of identity politics and provincial economic advantage that have played into the constitutional and fiscal debates. Changes in government can also be critical, most dramatically perhaps when separatist parties have governed in Quebec and Scotland, but more generally as well

depending on the ideology, partisan alliances, and agendas of the governments. The sudden appearance of Brexit on the top of the UK's agenda is only the most recent example.

Whatever the state of high politics, much intergovernmental work happens below the radar, as officials in both jurisdictions work pragmatically on issues that may be routine and uncontroversial, or complex and technical in areas such as finance or law. Sometimes the technical swiftly turns into the political, as for example in the UK in the negotiations over the detailed fiscal framework for new Scottish tax powers.

Another, perhaps surprising, similarity is the absence of constitutional arrangements in which these issues are discussed. The frameworks of intergovernmental relations in both jurisdictions are essentially ad hoc and informal. The significance of Canadian arrangements has waxed and waned over time, as the scale of federal resources devoted to them shows. The UK arrangements are the product of administrative deals (in a "Memorandum of understanding") between the governments. In the absence of a legal mandate they too have gone through periods of disuse. In both jurisdictions, intergovernmental relations are executive driven, and the scope for oversight by legislators is very limited. Provincial or devolved leaders may, for strategic or tactical reasons, announce publicly their aims—their "ask"—in dealing the central government. This may increase pressure on the central government and, should the demand fail, permit the passing of blame<sup>32</sup>. Negotiations will normally be dominated by the executives with the legislatures or public having almost no role unless the leaders of a government decide that it may suit their purpose to involve the public or legislature in some way. This reflects the top-down functioning of parliamentary regimes (quite different from congressional ones). Very occasionally, however, legislators in Canada have made a difference as champions of a claim by their provincial government, for example over offshore rights or revenues, even going up against their own party when it is in government. This is seen today in the UK where Scottish MP's at Westminster are almost all nationalist members supporting the SNP government in Edinburgh.

### *Contrasts*

The most profound contrasts are structural. Canada is a largely symmetrical federation, whereas the UK is deeply asymmetric. Canada has always been a federal country and the whole country is federal in that every Canadian functions as a citizen of both a provincial or territorial unit and of the country. The United Kingdom, by contrast, is not federal, and probably never will be; it is doubly asymmetric, with devolved arrangements for three parts of the country (but excluding the 85% of the UK citizens in England), and with the devolution arrangements varying for each of the three units.

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These structural differences profoundly affect the political dynamics in the two countries. Intergovernmental relations are always important in Canadian political life from coast to coast and are a central concern of the federal government, while they are normally peripheral to the political life of the United Kingdom, rearing their heads at time of crisis or change, and of interest to only a small minority of the population. Thus, thinking about the structure and functioning of the federation is a core interest of Canada's central government that must be factored into its other interests and objectives. Very often, Canada's federal government needs provincial cooperation—however obtained—in order to advance key policy and political objectives. For the UK government, by contrast, intergovernmental relations are not just a recent novelty, they are mostly an irrelevance, with little or no sense that they affect the political fortunes of the government, whose MPs are overwhelmingly English.

Thinking about the territorial constitution is a side issue for the British government; it is episodic, incremental, and driven by immediate crises. While there have been major constitutional reviews by the UK government, such as the Kilbrandon Commission in the 1970s, in general it has tended to be reactive to pressures from the devolved regions and to deal with them with little regard for any larger systemic implications. Thus the model for Scottish devolution adopted by the Labour government in 1999 was largely conceived by through the Scottish Constitutional Convention, which was not concerned by the systemic issues for the UK. In Canada, by contrast, Quebec and other provinces have periodically developed elaborate proposals for redesigning the federation, but the federal government has always treated these as only one input in its thinking and it has always led on the broader processes of constitutional reform.

In substantive terms, the UK government's default position has been to concede many demands for increased devolution—even though this means that it is becoming ever more marginal in the day-to-day governance north of the border. The Canadian federal government, by contrast, has largely resisted demands for increased constitutional devolution, which it views as risking its relevance to its voters across the country as well as its ability to manage major issues. Moreover, constitutional asymmetry has never found much favour in Canada: while it has been a favourite option of Quebec, Pierre Trudeau strongly resisted it as Prime Minister on the grounds that it risked making Quebec MPs marginal in Ottawa. The other provinces have traditionally been very chary of special powers or status for Quebec; Alberta, which is the second-most autonomy minded province, has always advocated “equality” amongst the provinces. So not only is Canada a symmetric federation, but it is characterized by active resistance to asymmetry.

The UK the main allocation of powers was worked out during the period of administrative devolution and carried over into the new political set-up; it is remarkably clear, and British politicians—overwhelmingly English—have had little incentive or opportunity to influence or invade the jurisdictions of the devolved

governments. In Canada, by contrast, the division of powers includes many overlaps and the federal government has made strategic use of its spending power to influence provinces, so the Canadian system involves much more interaction across a wide range of issues than happens in the UK. Canadian federal parties have often campaigned with the promise of major initiatives that require provincial cooperation or tranche on their jurisdictions in health, social policy, environment, local infrastructure and post-secondary education. In doing so, they are responding to the concerns of voters who tend to show little appreciation for the allocation of powers. At a technical level, the strict separation of legislative powers but the effective sharing of some administrative powers in Canada, contrasts with the UK, where law-making competence can be shared, but executive powers are strictly separated.

Constitutional issues have been important in both Canada and the UK. The long story of Québec and its aspirations was the most significant intergovernmental issue in Canada for at least a generation, though on occasion it had to share pride of place with disputes over natural resources, notably with Alberta and the east coast provinces claiming the offshore. However, even when they were at their peak, Canada's constitutional debates shared the stage with other intergovernmental issues because of the overlaps between the federal and provincial governments in so many program areas. In the UK, constitutional issues have been much more dominant as the focus of intergovernmental relations. Northern Ireland has only ever raised a constitutional issue, though for much of recent decades, it was not intergovernmental as devolved government has been suspended. The U.K.'s main objective has been to reinstate and sustain devolved government, which has necessitated elaborate constitutional arrangements. Scotland's debate has been dominated by independence, and continues to be after the Brexit vote. Even in Wales, where secession is not a real issue, a series of incremental constitutional changes has been the main content discussions between the Welsh administration and the UK government. In all these cases, the British focus on constitutional matters reflects the clean division of powers and the preparedness of the UK government to cede more or less completely a role on major issues of public policy in the devolved areas.

The horizontal asymmetry in devolution arrangements amongst the three devolved governments in the U.K. has led to the dominance of bilateral deals, which is a further contrast to Canada. Most major IGR issues in Canada are dealt with multilaterally, though there can be considerable flexibility in precise arrangements amongst the provinces. In general, there has been resistance to asymmetric arrangements, especially concerning the constitution, and provinces tend to complain jealously if one is getting a special deal. In contrast to the Privy Council Office in Canada, each of the three UK devolved administrations has its own (tiny) sponsoring department in the UK government, and each has its own very particular issues. Northern Ireland's story is always dealt with separately, for understandable reasons. At times of crisis, Northern Ireland expects and gets immediate and

sustained access to the top of the UK government<sup>33</sup>. Scotland pursues a furrow driven over the past 10 years by nationalist aspirations, whereas Wales spent has spent over 10 years coming to grips with the reality of devolution, and seeking to fashion a well-functioning settlement<sup>34</sup>. In Canada, Québec has certainly presented a unique challenge, but most issues affect all provinces to some degree or another, and can be dealt with successfully multilaterally. However, there are exceptions where deals, such as those on the offshore with Newfoundland and Nova Scotia, are negotiated bilaterally and whose terms may include special arrangements in what are normally national programs—which in these cases related to how offshore revenues would be treated in calculating equalization payments.

Naturally enough, most routine intergovernmental issues are about money. In both the UK and Canada the central government has more taxing capacity, but Canada's provinces raise an average of 83% of their revenues, which contrasts with UK past experience<sup>35</sup>. Despite this, federal transfers are important in Canada and so in both countries "fiscal federalism" is a major preoccupation, though with many differences in form and process. Whereas in Canada the major transfers are system-wide (though with occasional tweaks, as in the offshore equalization arrangements), the UK has consistently made special arrangements for Scotland and Northern Ireland, and to a more limited degree for Wales<sup>36</sup>. A further difference in the fiscal arrangements is the ability of Canada's federal government to change the regime to meet changing circumstance. While the Barnett formula has become virtually untouchable, the formulas underlying Canada's equalization transfers and its health and social transfers have changed dramatically over-time, with large shifts in the allocations by province. While the federal government consults the provinces on these arrangements, it has preserved the right to decide. Such transfers account for about 25% of federal program spending, so the level of transfers are an important factor shaping the federal government's fiscal situation. Beyond this, shifting fortunes in the resource sector can have knock on effects on fiscal arrangements forcing design, as with the equalization program. As much as the provinces care about such matters, the complexity of fiscal arrangements can make it difficult for provinces to mobilize public opinion in support of their positions. The fact that the UK central government is also effectively the "provincial" government for England, establishes a measuring standard for what spending might be in the devolved areas, but there can be no comparable standard in Canada.

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<sup>33</sup> Powell, *op. cit.*

<sup>34</sup> Wynn Jones and Scully, *op. cit.*

<sup>35</sup> The UK has however taken explicit policy learning from Canada in changing its arrangements, to allow the Scottish parliament taxing powers. The Scotland Act 2012, extended in the Scotland Act 2014, was explicitly based on Canadian experience of sharing the income tax base between federal and provincial government, so that now around half of devolved spending is now supported by taxes which "belong" to the devolved body. The system seems to work well in Canada; it is too early to say whether it works well in the UK.

<sup>36</sup> There is an entirely separate fiscal regime for the three territories, which have small populations scattered across vast areas.

The UK's system of fiscal federalism is path-dependent, having evolved from the administrative arrangements inside the government. One result, perhaps surprisingly, is that the fiscal transfers from central to devolved government are utterly without hypothecation. It was not needed for transfers inside UK administration; and this practice was carried forward for intergovernmental transfers. There is one large, unconditional transfer for each government, which is free to spend it as it will. In Canada, the largest transfers are for health and social welfare and they were originally highly conditional, as the federal government used the offer of money as an incentive for the provinces to create new national programs. However, over time the federal government backed off on conditionality—because of fiscal pressures, but also in recognition that once the programs are established it should not try to manage them. However, even as it has backed off on most conditionality for the largest transfers it has tried to stay relevant to public concerns by creating new targeted obligations for the provinces, e.g. waiting times for certain surgical procedures, or smaller “boutique” conditional transfers, such as for infrastructure, which have high visibility (guaranteed by ubiquitous signs). This concern of federal politicians to stay relevant to voters’ concerns has often motivated federal initiatives affecting the provinces, but the same dynamic does not operate in the UK.

In conclusion, it is evident that context matters hugely. There are profound contrasts between Canada and the UK: symmetry versus asymmetry; overlap in jurisdictions versus largely “water-tight” compartments; an active use of the spending power with conditional transfers versus one big unconditional transfer; flexibility in fiscal arrangements versus rigidity; federal versus quasi federal. Arguably most of the lessons flow one-way, from a fully, formally, federal country with long experience of multilevel government, to a young special autonomy regime, which is still very much in evolution and facing significant management challenges.