Scotland in the multi-national UK state: interpreting legislatures, decentred state, territorial governance

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Scotland in the multi-national UK state: interpreting legislatures, decentred state, territorial governance

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ABSTRACT
The article offers a critique of the ‘decentred state’ and the working of the devolved Scottish Parliament in its legislative and political relations with the UK Parliament. It argues that analysis of relations between the devolved Scottish Parliament and the UK Parliament, requires examination of both the political culture and political narratives surrounding constitutional governance and the future of the domestic UK union. Both play a pivotal role in shaping interparliamentary relations in the devolved UK. The paper draws on empirical research from two projects that used both documentary analysis of parliamentary sources and interviews with 35 parliamentarians and officials as a Commons Academic Fellow 2016–2021 and Scottish Parliament Academic Fellow 2022–2023. Both the political narrative and culture of interparliamentary relations between the UK Parliament and Scottish Parliament have been impacted arguably even more by the outcome of the 2016 UK EU Referendum than by the 2014 Scottish Independence Referendum.

KEYWORDS
Devolved legislatures; Scotland; decentred state; interparliamentary relations; territorial governance

Introduction
This article offers a critique of the ‘decentred state’ and the working of the devolved Scottish Parliament in its legislative and political relations with the UK Parliament. It argues that analysis of relations between the devolved Scottish Parliament and the UK Parliament, requires examination of both the political culture and political narratives surrounding constitutional governance and the future of the domestic UK union since together both play a pivotal role in shaping interparliamentary relations in the devolved UK. The paper draws on empirical research from two projects that used both documentary analysis of parliamentary sources and the analysis of 35 interviews...

In the academic literature on contemporary UK governance the actual work between devolved legislatures has attracted less attention than the nature of relations between the devolved governments and the UK government. Evans, for example, makes an important contribution to academic debates concerning the new institutional relationships and networks – following the constitutional reforms (Evans, 2019). He examines both informal and formal intergovernmental and officials’ networks and extends his analysis to inter-parliamentary relations within the devolved UK as part of the constitutional governance of a multi-national UK. Arnott (2020) research report to the Institute on Welsh Affairs commented:

The UK’s uncodified constitution, the implications of asymmetric devolution for representative democracy, and inter-parliamentary relations remain neglected areas of research. The ‘pooled’ (shared) powers of the devolved and UK legislatures are intermeshed – future relations between the legislatures will shape the working of devolution after the exit of the UK from the EU on 31 January 2020. (Arnott, 2020, p. 35)

The insights of current and former senior officials and parliamentarians in, for example the work of Silk and Evans (2023), and of the Scottish Parliament Presiding Officer 2016–2021 Rt Hon Ken McIntosh, concerning possible parliamentary reforms to further build on inter-parliamentary relations in the devolved UK also provide invaluable contributions to the case for further reform (McIntosh, 2021). Lord Speaker of the House of Lords, the Lord McFall of Alcluith, was instrumental in the bringing together members from committees in legislatures in the devolved UK for an informal forum to discuss issues Brexit issues (Arnott, 2020). The Brown Commission Report in 2022 recommended constitutional reform to inter-governmental in the devolved including the ‘entrenchment’ of devolved powers and a new second chamber in the UK Parliament that would be an Assembly of the Nations and Regions (Brown Commission, 2022).

Silk and Evans point to the recurrence of inter-parliamentary relations as area for potential parliamentary reform being acknowledged in the work of a number of Commissions and parliamentary inquiries such as the Calman Commission in 2009; the Commission on the Consequences of Devolution for the Commons in 2013 and the Commission on Devolution in Wales in 2014 (Silk & Evans, 2023, pp. 3–4). The Commons Public Administration and Constitutional Affairs (PACA) Select Committee Report on Inter-Institutional Relations in the UK in 2016 argued:

… inter-parliamentary relations in the UK are arguably the poorer and less well-developed relative of inter-governmental relations. At a formal level
The PACA Report was published the year after the Scottish Parliament Devolution (Further Powers) released its report on the Changing Relations: Parliamentary Scrutiny of Intergovernmental Relations (Scottish Parliament Devolution (Further Powers) Committee, 2015). A new written agreement between the Scottish Parliament and the Scottish Government to provide information and transparency of inter-government relations within the devolved UK was included in the report recommendations (Scottish Parliament Devolution (Further Powers) Committee, 2015). The Commons Procedures Select Committee also launched an inquiry in September 2020 on the procedure of the Commons and the territorial constitution (UK Parliament Committees, 2020). Evidence was taken in this Inquiry until 31st August 2021 and a Report is yet to be released 18 months following the evidence sessions.

Both the political narrative and the culture of interparliamentary relations between the UK Parliament and the Scottish Parliament have been impacted arguably even more by the outcome of the 2016 UK EU Referendum than by the 2014 Scottish Independence Referendum (Arnott, 2023). Internal political pressures in the domestic UK union concerning the working of devolution and territorial governance are all too apparent:

The EU (Withdrawal Agreement) Act became law on 23 January 2020 without the consent of any of the three devolved legislatures. The UK Government took the view that the circumstances of leaving the EU were not ‘normal’ – they are unique’ so legislating without consent was justified, since the convention only refers to what should ‘normally’ happen. (Paun & Shuttlework, 2020, p. 19)

Writing in 2021, Andrews argued that post-Brexit legislation the brand of Unionism advanced by the Conservative-led UK Government had been ‘muscular’ (Andrews, 2021). Further, Martin (2021) argues that many British Conservatives may been questioning devolution as a form of territorial governance in the UK multi-national state. The Covid pandemic may have arguably seen a shift back to the rhetoric of asymmetrical devolution for Scotland and Wales but post-pandemic ‘muscular Unionism’ may have come more to fore in territorial governance of the devolved UK. Section 35 of the 1998 Scotland Act makes provision for the UK Government via the Sectary of state for Scotland to ‘veto’ devolved legislation passed by the Scottish Parliament. This power was invoked in January 2023 for the first time since the establishment of the devolve Scottish legislature in 1998 with the blocking of the Gender Recognition Reform (Scotland) Bill. If the UK Government considers devolved legislation to have an ‘adverse’ effect on ‘reserved’ or ‘retained’ powers it can halt its procession to law (Torrance, 2023).
The cross working between governments in the devolved UK and inter-parliamentary working following the UK leaving membership of the EU in December 2020 are part of the constitutional narrative (Arnott, 2023). Other dimensions to the narrative, however, play an important role, especially in relation to the political culture of legislatures in the devolved UK. For Bevir (2013) using the decentred state as an analytical tool can help to assess how state actors react to change. Conventions of territorial governance and in the unwritten constitution since 2016 have been severely tested and competing narratives of legislative legitimacy in devolved UK have come to the fore.

In March 2021 the UK Cabinet Office published the Dunlop Review in UK Government Union capability (Dunlop, 2021). In his report, Lord Dunlop proposed the establishment a new government department, a UK Intergovernmental Council to shift Whitehall departmental culture concerning ‘devolution capacity’ (Rycroft, 2021). The review of intergovernmental relations in the devolved UK by the UK Cabinet Office and the Department for Levelling Up published in January 2022 focuses on cross working at departmental level, including the use of common frameworks. It recommended that ‘All governments commit to increased transparency of intergovernmental relations through enhanced reporting to their respective legislatures’.

Following UK exit from the EU 2020, pre-existing potential areas of legislative conflict have surfaced between the UK Parliament and the devolved Scottish Parliament. One such area relates to the legislative authority to hold a second Scottish Independence Referendum via section 30 requests from the Scottish Parliament. Another concerns legal challenges from UK Government, via the UK Supreme Court, to the devolved competencies of the Scottish Parliament including the right to call a referendum and also the Scottish Parliament’s legislative support for the United Nations Convention of Children’s Rights in November 2021. This article considers whether the UK Parliament has been more assertive over devolved legislatures since 2016, and whether it has strayed into the area of devolved competencies without securing consent of devolved legislatures. The analytical framework uses the broad concept of the ‘decentred state’ to critically examine Scottish Parliament and UK Parliament relations.

This article does not undertake a comprehensive review of the working and the culture of the Scottish Parliament. Rather, it focuses on the changing nature of territorial governance through the lens of the theory of the decentred state (Beech, 2022; Bevir & Rhodes, 2007). It explores the value of the analytical concept of the ‘decentred state’ and the dispersal of power in the interactions between the devolved Scottish Parliament and the UK Parliament. This leads to a drawing on theoretical literature concerning the reshaping of the state in the devolved UK, and the extent to which the
‘rules of the games’ between legislative actors have been unsettled. Examples are referenced of territorial governance during the process of the UK leaving the membership of the EU and of the shape of governance during the period of the Covid-19 pandemic. As argued above, this is not a comprehensive discussion of the timeline of events; rather the analysis examines the value of the broad concept of the ‘decentred state’ in legislative functions and culture in the devolved UK.

The ‘decentred state’ is examined via territorial network governance (Arnott, 2015, 2020). As Bevir (2022, p. 3) argues, there are differing approaches to unpacking the nature of the ‘decentred state’ including pluralist state; hollowed state and stateless state. Further, it draws on Beech’s work on the ‘decentred theory’ and state governance. Beech comments:

Decentred theory implies that state activity is disparate, probably containing fluid examples of network governance, asymmetrical power, metagovernance, and congestion. (Beech, 2022, pp. 11–12)

Each of the approaches to the ‘decentred state’ brought into the analysis regarding the working of the Scottish Parliament in the devolved UK. Further, it is argued that there can be overlap between different approaches in state governance. The changing narratives of territorial governance and statecraft since 1999 led to wider analytical questions concerning the distribution of power between political institutions in the culture and workings of devolution in the asymmetrical state.

The core of this paper follows in three sections. The first discusses how we might draw on differing analytical frameworks in examining how, in approaches to state governance, elected representatives and officials responded to nationalism, Brexit and the Covid pandemic in Scotland and at UK central executive and legislative levels. It examines the decentred state and territorial governance in the devolved UK. The paper argues that narratives and local traditions inform the formal and informal culture of political institutions in a devolved UK. It is argued that policy discourses play a central part in considering governance in the devolved UK state and in the governing of Scotland.

In the second section, the paper examines the decentred state and the ‘unsettling’ of asymmetrical devolution. It argues that historical traditions and ‘storytelling’ are an essential part of the analysis of contemporary Scottish politics and governance (Arnott & Ozga, 2009; McPherson & Raab, 1988; Raab, 1992). There is limited research on the relations and culture of relations between the Scottish Parliament and the UK Parliament. Viewed through the prism of devolution, the analysis of the Scottish Parliament is not straightforward. This paper is not intended as a comprehensive analysis. It will focus on narratives and historical traditions that may have shaped the working of the devolved Scottish Parliament – both informally and formally.
in its policy-making approaches and styles. It has been argued that approaches to policy-making in devolved Scotland draw on narratives of ‘bottom up’ and consultative approaches (Arnott & Ozga, 2016; Cairney, 2022; Keating, 2010; 2022) and that these narratives are reflected in the principles underpinning the Scottish Parliament. In Arnott and Ozga (2009, 2016) the ‘Westminster model’ is accounted a culture shaping the working of the UK Parliament, a culture that the Scottish Parliament has attempted moved away from. A note of caution is necessary. If a ‘new style’ of politics has informed the culture and the working of devolved Scottish Parliament and whether a ‘new style of politics’ is significance for inter-parliamentary relations requires assessment.

The third section of the paper explores changing and contingent traditions in the context of Brexit and responses to the Covid-19 pandemic. Arguments concerning governance and the decentred state during the Brexit process are examined, as are responses to the Covid pandemic in Scotland. Whether viewed as tensions, or as shared solutions to societal challenges, the overall working of devolution raises a number of challenges for governing approaches to the constitutional future of the domestic UK union including conceptualisation of the ‘decentred state’.

**Decentred state and territorial governance in the devolved UK**

Unpacking the nature of relationships between policymaking actors and devolved UK legislatures is not a straightforward task. There are competing and shifting narratives concerning the functions of devolved legislatures in the UK policy-making. It is difficult to define how these narratives affect relationships between institutional structures and policies, or the legitimacy of the role played by parliamentarians. The devolution ‘settlements’ in the three nations remain far from settled. Twenty-five years since the establishment of the devolved legislatures in the UK there have been many twists and turns in the powers and responsibilities of the UK state regarding approaches to the territorial governance. Changes after 1998 gradually increased the powers of the devolved legislatures, though not uniformly. Following UK exit from the EU in December 2020, however, the recentralisation of UK governance, back towards the nexus of Westminster and Whitehall, has been a growing narrative in the devolved legislatures in Wales and Scotland (Keating, 2022; McEwen, 2022; Morphet, 2021). During the Johnson Premiership 2019–2022, as argued above, ‘muscular unionism’ seeking to reassert Westminster and Whitehall control over devolved policy making stressed the role of the Office of the Secretary State for Scotland (formerly the Scottish Office) and other Whitehall departments, especially the Treasury, in state governance of the multi-national domestic Union.
Further analysis of the interplay between devolved legislatures and devolved policy making actors together with the interplay of both with the UK legislature and the UK executive is required in critical analytical approaches to state governance and the ‘decentred state’. The connections and relationships between the public and legislatures weave their way through political debates about the future directions of territorial governance in the devolved UK. Lord McConnell of Glenscorrodale in a debate in the Lords Chamber on the Dunlop Review of UK Government Union Capability on 1st July 2021 stressed that:

The sentence that I like best in the report by the noble Lord, Lord Dunlop, is the one where he says that

‘the United Kingdom … is the most successful multinational state in the world’.

It is the first time in 22 years that any government report on the United Kingdom has used that description, a ‘multinational state’. That is the United Kingdom today. That is the reality, and we need a completely new, positive case for that multinational state if it is going to exist for the rest of the 21st century. (Hansard, 2021, vol. 83)

Questioning of territorial governance in the domestic UK union pre-dates the late twentieth century as do the perceived gaps of the UK legislature’s handling of parliamentary business pertinent to distinctiveness of institutions, culture and needs in Scottish society. Devolution operates against the backdrop of an uncodified UK constitution and constitutional conventions (Bogdanor, 2001; Mitchell, 2014; Norton, 2020). As McConnell argues, there is a perceived need for the UK wide political institutions to set out the case of the future of UK domestic union. The future of the domestic Union in the UK and the constitutional reform of the late 1990s remain consistently very salient after the ending of the UK’s EU membership. Following the 2014 Scottish Independence Referendum result where 65 per cent voted to remain in the domestic UK union to 45 per cent voting to support independence, narratives for enhanced devolution, up to including independence, remained a consistent thread in day-to-day politics in Scotland. The 2016 EU Referendum result further unsettled constitutional relations in the devolved UK. The drafting and content of the 1998 Scotland Act had been premised on UK membership of the EU. The ending of EU membership had a direct bearing on the working of devolution.

From Nicola Sturgeon’s speeches as then First Minister of the Scottish Parliament, following the May 2021 Scottish Parliamentary Election, it was clear that questions of legitimacy and accountability were central to narratives of political discourses concerning Scotland’s future relationship within the UK following the Brexit referendum result in 2016. On 28th
June 2022 Sturgeon announced a ‘route-map’ to holding the second Scottish Independence Referendum to the Scottish Parliament in 2023:

… When the late Canon Kenyon Wright – who led the Convention – addressed Westminster’s refusal to accept the democratic demand for a Scottish Parliament with this question: ‘What if that other voice we all know so well responds by saying, “We say no, and we are the state”?’ His answer – ‘Well we say “yes – and we are the people”’ – was simple but powerful.

And it is as relevant now as it was then. (Sturgeon, 28th June 2022, First Minister Statement to Scottish Parliament – Independence Referendum)

As leader of the SNP, Sturgeon received criticism from the pro independence political parties and from the wider independence movement, for focusing too exclusively on the strategy to hold a second referendum on Scottish independence rather than engaging in a wider public and civic engagement on the case for independence. Her critics also favoured more attention on the framing of political and legislative institutions for an independent Scotland and for Scotland’s relations with other nations in the UK and within Europe. The UK Supreme Court ruling in November 2022 that the Scottish Government did not have the legal competency to hold a second Scottish Independence Referendum without the passing of a Section 30 order by the UK Parliament brought to the fore tensions within the pro independence movement on the use of a referendum as a route to Scottish independence (Psycharis & Mills, 2023). The Secretary of State for Scotland, also for the first time since the establishment of the devolved Scottish Parliament in 1998 vetoed, under the terms of the 1998 Scotland Act, devolved legislation enacted by the Scottish Parliament. The Gender Reignition Reform (Scotland) Bill was vetoed by the UK Government using Section 35 of the Scotland Act 1998. Torrance (2023, p. 1) noted that under the 2012 Memorandum of Understanding this would be ‘a matter of last resort’ and:

… The power is exercised through a negative statutory instrument presented to the UK Parliament, which would provide a legal instruction to the Presiding Officer of the Scottish Parliament not to present a bill to the King for Royal Assent. This would mean that although the Scottish Parliament has passed the Gender Recognition Reform Bill, it would not become law. (Torrance, 2023, p. 1)

The sudden announcement of her intention to standdown in both her role as First Minister and also as the leader of the SNP in February 2023 marked a new phase for the party. With the election of Humza Yousaf in March 2023 as the new SNP leader and new First Minister a new ministerial portfolio for Independence was announced. Parliamentary liaison and co-ordination regarding the independence strategy was the key responsibility of this ministerial role. The new ministerial post was arguably a recognition by the SNP senior leadership that party strategy has focussed too heavily on the process
to a second Scottish Independence Referendum rather than setting out the case for the Scottish Parliament assuming full powers up to including independence.

The changing and contested interface between devolved and reserved competencies of legislatures in the devolved UK is central to our analysis of state governance and territorial governance using the broad concept of the ‘decentred state’. Below, it is argued that the ‘unsettling’ of asymmetrical devolution due to UK exit from the EU and to the responses of the UK and devolved governments to the Covid pandemic can be analysed in relations to changing state and territorial governance in the ‘decentred state’.

Decentred state & ‘Unsettling’ of asymmetric devolution: history matters

Viewed from perspective of the state, the decentralising of policy making to regional or local levels, including the constitutional reforms of the late 1990s re-establishing a Scottish Parliament, could be analysed via the concept of the ‘decentred state’. Devolution would be part of the changing state governance with the ‘hollowing out’ of the state. For Cairney (2022, p. 47) one possible conceptualisation of the operation of the decentred state could be that:

… there are many policymakers and influencers spread across many types of government, producing a myriad of rules, networks, locally dominant beliefs, and ways to respond to socioeconomic conditions and events outside of the control of any single ‘centre’.

Fragmentation and co-ordination of policy making within and between territorial networks raise questions concerning ‘steer at a distance’ by Whitehall and Westminster (Bevir & Rhodes, 2007; Rhodes, 2012; Rhodes et al., 2003). A broader analytical question is does ‘Brexit’ reconceptualise UK state governance in the multi-national UK state by promoting co-ordination of domestic UK policy making or does it fragment cross UK policy capacity in the working of devolution? For the UK multi national state, asymmetric devolution offered UK governments a means of responding to differing territorial demands across the UK (Arnott, 2019) and trans governmental networks within the domestic UK union could potentially provide links between UK and devolved legislators. However, it is argued that there is a ‘missing link’ between legislatures in the devolved UK (Arnott, 2020). Further, the analysis below of the Brexit process and the terms of the UK departure from EU membership in December 2020 raise questions concerning whether both were more explicitly fractured narratives and ‘story-telling’ by legislators concerning re-centralisation of devolved powers by Whitehall and Westminster and that this was related to an attempt to reinstate both the
unitary state in the domestic UK union and the concept of the ‘Westminster model’ (Russell & James, 2023).

It has been possible to develop institutional structures of the devolved UK state with a degree of distinctiveness for each of the nations and the national territories (Ayres et al., 2018; Birrell, 2012; Bogdanor 2009, 2019; Newman & Kenny, 2023). Writing in 2002, Richard Parry, succinctly argued that in the first two years of the devolved legislature in Scotland that:

The environment has been one of political tension, as competence on particular issues has become a test of the new constitutional structure. There has been confusion between the Scottish Parliament and the Scottish Executive, and some surprise at the inevitable reproduction of government versus opposition and frontbencher versus backbencher patterns found at Westminster. (Parry, 2002, p. 315)

The legislature in devolved Scotland is still relatively young but does Parry’s argument above still have relevance today? In part the answer lies in the analysis of approaches to governance before and after 1999 and also the ‘unsettling’ of asymmetric devolution following Brexit. The establishment of the devolved legislature in Scotland may be seen as, but was not solely, a symbolic concession to national identity and nationalism in Scotland. The creation of the devolved Scottish Parliament offered the possibility of a new political culture and a shift from the adversarial two party politics underpinning the Westminster system. Whether a new political institution can foster a new political behaviour and culture may remain an open question (Henderson, 2005; Mitchell, 2010b).

In 1998, the move from administrative devolution to legislative devolution was not a wholesale change to approaches of territorial governance by Whitehall and Westminster. Local traditions of policy making that tie with nation building arguments about the distinctive Scottish civil society and also approaches to local governance in society were arguably narratives of policy elites in Scotland (Arnott, 2019; McPherson & Raab, 1988; Paterson, 1994). The 1998 Act arguably says little about the working of the devolved Scottish Parliament. That would lie with the Consultative Steering Group of the Scottish Office. As Alice Brown (2000, p. 542) argued in 2000, ‘in exploring the process of making the Scottish Parliament, the technical cannot be divorced from the political’. In other words, the devolved legislature would bring a ‘new style of politics’ that rejected the ‘rituals of Westminster’. Consultation and bottom up policy making involving civil society and wider Scottish society would be part of a culture of openness, sharing of power, equality and accountability as underpinning principles of the legislature.

The powers to be retained by the UK Parliament were set out in the Scotland Act 1998. This marked a change to the approach taken in the 1978
Scotland Act which had set out devolved areas on which the Scottish Assembly could legislate. There are several other differences between the Acts of 1978 and 1998. Notably, the switch in name for the devolved legislature from Assembly to Parliament was more than symbolic. It reflected a changed political culture informing debates for constitutional reform. Sovereignty, representation and legitimacy occupied a central place in the political arguments concerning the future territorial governance of Scotland in the domestic UK union.

A rejection of Thatcherite market based solutions to societal inequalities clearly featured in the Scottish Home Rule campaign in the 1980s and 1990s (Arnott, 2011, 2015). Perhaps more significant in that campaign were the aforementioned claims of a deeper ‘democratic deficit’ in the governing of Scotland within the Westminster model. Within this narrative, the legitimacy of Westminster/Whitehall pre-eminence and the ability and willingness of the centre to respond to Scottish circumstances were questioned. The 1998 Scotland Act was a watershed in the governing of Scotland in the domestic UK union. That it marked a complete departure from pre 1999 governing apparatus via the Scottish Office would be a mistake easily made. Elements of continuity in the policy environment remained part of the equation. Mitchell argued in 2010 that:

Apart from issues of representation, the new Scottish Parliament resembles Westminster more than its founders had hoped. It was influenced by the same reform agenda that has animated debates on reform of the Commons. The most significant changes from the Westminster model are evident in the voting system, though less than anticipated. (Mitchell, 2010a, p. 98)

He further argues that there was a ‘narcissism of small differences’ that has shaped ‘comparisons with Westminster which fail to acknowledge basic similarities. This has arisen partly from comparing Holyrood with a mythical, even caricatured, Westminster, a Westminster that supposedly refuses to reform itself’ (Mitchell, 2010a, p. 99).

The Scottish Parliament is a single chamber legislature. Its 129 members (MSPs) are elected by an Additional Member System (AMS). This proportional voting system is clearly very different from Westminster’s ‘First past the Post’. At Westminster elections, popular votes in the lower 40 percentile range often result in large absolute majority Governments. This, it was argued, could not happen in the Scottish Parliament. The d’Hondt modification of AMS used for Holyrood elections indeed was intended to encourage cross-party coalition governments. The electoral success of the SNP in the 2011 Scottish Parliament in securing enough MSPs to form a single party majority government was an electoral watershed for both Scottish and British politics. The motivation for the devolution campaign in Scotland in the 1980s-90s was arguably largely ‘conservative’ in wanting to
preserve an existing Scottish distinctiveness which in the twentieth century was perceived to be underpinned by social democracy.

In the next section we consider the extent to which Brexit and Covid pandemic were watershed periods for how the UK legislature approached territorial governance in the ‘hollowed out’ UK state. Was there a shift back to the ‘Westminster model’ in both the political narratives and in the political culture of UK territorial governance?

**Scotland in the multi-national UK state: territorial governance, Brexit and Covid pandemic**

**Scottish Parliament, Brexit & decentred state: Brexit means Brexit**

UK membership of the EU provided the legislative backdrop to the 1998 Scotland Act. The importance of EU membership as backdrop to asymmetrical devolution was pivotal to the working of legislative devolution. The ‘constitution’ was a ‘retained’ responsibility and in the practice where EU law had supremacy over Scots law and Westminster legislation, the principle of ‘subsidiary’ enabled the devolved Scottish Parliament to align with EU regulations in the implementation of policy. For the domestic UK union, UK membership of the EU bounded the multi-national UK together. The uncoupling of the UK Parliament from EU institutions is a too simplistic account of the policy complexity of territorial governance in the devolved UK.

The territorial divisions in the 2016 EU Referendum votes posed questions about how UK state institutions and actors would respond ‘to significant change’ required following the UK leaving the EU membership. For Beech (2022, p. 68) that Brexit will lead to the United Kingdom being meaningfully independent of a supra-national federal politics, the sheer act of ‘Brexiting’ is a decentring event in and of itself.

There are governing tensions viewing ‘Brexiting’ as a decentring event. Brexit, arguably, saw arguments about the re-framing the domestic UK union as a ‘unitary state’ with an integrated UK state (Keating, 2022). The sudden change to the UK’s constitution following Brexit means many of these major decisions are now being made in the absence of any formal mechanism for oversight and scrutiny by the four parliaments in the devolved (Arnott, 2020). Reflecting on the ‘new dilemmas’ facing the territorial governance of the UK in light of the Brexit, Keating (2022, p. 507) points to the UK as:

… presented [as] a model of territorial/national accommodation which, rather than seeking a ‘solution’ to the nationalities question, provided a basis for
negotiation and adjustment. This rests upon historic understandings of the state as a union, together with the overarching European framework. Nation, state and sovereignty were all contested but this rarely became a zero-sum game; even the prospect of Scottish independence in 2014 was attenuated by the fact that both successor states would remain within the EU.

Conceptualisation of the decentred state in relation to the territorial governance of Scotland in the multi-national British state has explores uneven ‘hollowing out’ of the devolved UK state. Bevir’s (2013, p. 1) argument:

… emphasizes the diversity of governing practices and the importance of historical explanations of these practices. Governance is seen as a set of diverse practices that people are constantly creating and recreating through their concrete activity.

Fast paced political and constitutional debates about the governance of the devolved UK after the EU Referendum in 2016, brought the role of legislatures in the devolved UK to the fore with differing visions of relations between nations within the UK and with the EU. Withholding legislative consent motions (LCMs) regarding the EU (Withdrawal) Act and other Brexit related legislation and also the Supreme Court ruling on the Withdrawal of from the European Union (Continuity) (Scotland) Act 2021 highlighted disagreements between devolved legislature in Scotland and the UK legislature (McCorkindale & McHarg, 2019). Tensions have continued following the UK Parliament passing the UK Internal Market Act 2020 that ‘governs trade between nations’ and:

… there has been strong opposition from the Scottish and Welsh governments. The internal market will have significant implications for the governments, parliaments, regulators, courts and businesses in all parts of the UK, and concerns have been raised about its implications for devolved policy making. (Sargeant & Stojanovic, 2021, p. 1)

Following the 2016 EU Referendum Nicola Sturgeon confirmed that the SNP Government would draft legislation for a second Scottish Independence Referendum. There were questions about the legality of the Scottish Parliament calling a second referendum. In 2012, the UK and Scottish Government had signed the ‘Edinburgh Agreement’ transferring power (Section 30 order) from UK Parliament to the Scottish Parliament to hold an independence referendum. Before the Article 50 vote in March 2017, Sturgeon requested the UK Government to move a Section 30 order for the Scottish Parliament to hold a second Scottish Independence Referendum before the spring of 2019. Sturgeon’s request to the UK Government followed a vote in the Scottish Parliament which sought temporary transfer of power to hold a second referendum. Prime Minister May rejected this request. The option of holding an advisory referendum in the absence of a Section 30 order had its drawbacks for the Scottish Government as it could be
challenged via the UK Supreme Court. The extent to which responses to the Covid pandemic added to the ‘unsettling’ of asymmetric devolution, especially in terms of the workings of the devolved legislatures, are considered below.

**Decentred state, Covid responses & ‘new dilemmas’**

The Covid-19 pandemic suspended established practices of governance in a period of crisis. A separate legal system in Scotland and the devolved competences of the devolved Scottish Parliament that were intertwined with the reserved powers of the UK Parliament could have brought largely similar responses to the Covid-19 pandemic initially by the UK Government and the Scottish Parliament. The 2020 Coronavirus Act to grant the UK Government temporary emergency powers in retained and devolved areas of competencies to respond to the pandemic was passed with the devolved legislatures passing legislative consent motions. However, as McCorkingdale and McHarg argued in 2020:

> While there remains significant commonality in the types of measures taken in response to the pandemic in all four UK territories, more differences in the detail, timing and tone of the response have emerged. Indeed, it has been claimed that the four-nation approach to the pandemic has effectively been abandoned. (McCorkindale & McHarg, 2020, p. 257)

Policy responses to the Covid-19 pandemic arguably moved from a four nation approach in the multi-national UK to a greater degree of differentiation. Legislative measures in the UK and Scottish Parliament were time limited and the Scottish Government’s responses tended to be more cautious in lifting Covid societal interventions. Analysing territorial governance in the devolved UK through the lens of the ‘differential polity’ the co-ordination of government responses within and across of the four nations differed. The interrelationship between governance, knowledge and expertise in government responses in the devolved UK was part of this greater degree of differentiation. Ozga et al. (2023, p. 8) argue for the UK Government:

> Critics have identified a dangerous diffusion of responsibility, the hollowing out of state capacities and reliance on corporate outsourcing or regulatory agencies as problematic consequences of this shift.

Public health lies within the devolved competences of the Scottish Parliament, as do education, the legal and justice system and social care. Assumptions underpinning the ‘hollowed state’ need to be qualified when comparing devolved nations and England. The ‘steering rather than rowing’ of policy approaches by governments in Scotland since 1999 and the UK government differ.
The Covid-19 responses by governments in the multi-national UK might be seen at first as a further ‘uneven’ hollowing out of the state in a devolved UK. However, devolved responsibilities intermeshed with reserved competences of the UK Parliament and UK Government. Notably, economic interventions by the UK Treasury to the financial pressures of the pandemic demonstrated not only a major reserved competency but impacted intergovernmental relations. Liaison between governments appeared to become more problematic with knowledge of and expertise in the working of devolution being questioned.

The key UK wide legislation for the ‘lockdown’ measures was the 2020 Coronavirus Act passed by the UK Parliament. An LCM in the Scottish Parliament supported the passing of the 2020 Act and its relevance to devolved legislative competences of the Scottish Parliament. The Scottish Government also introduced devolved legislation – Coronavirus (Scotland) Act 2020 and also Coronavirus (Scotland) (No.2) Act 2020 that pertains to devolved matters. In both the Scottish Parliament and the UK Parliament this emergency legislation was passed with limited parliamentary scrutiny. How the parliaments worked during the Covid-19 pandemic links to our earlier discussion of the culture of political institutions. UK governance during the Covid pandemic brought to the fore issues of policy co-ordination and control within the devolved UK. As Diamond and Laffin (2022) succinctly argue under the Johnson administration the awareness of the working of the devolution in the asymmetrical UK state of the multi-national UK was found wanting:

PM Johnson took a less conciliatory approach to the devolved nations than his two Conservative predecessors. During the second pandemic surge in Autumn 2020, Sturgeon and Drakeford complained they had not heard from the PM for 6 months (Norris and Brooks 2020). Ministers announced new English Covid-19 measures as if they applied automatically to the devolved nations, ignoring devolution (Diamond & Laffin 2021, p. 218).

**Summing up**

Varied and differing stories of democratic representation and accountability have informed the beliefs, culture and practice of politicians and officials in the devolved UK. Traditions and myths here play at important role in the social construction of societal challenges and responses to ‘new dilemmas’ in the Scottish polity, including the role of the devolved legislature following Brexit and Covid pandemic. The discussion above raises important questions concerning the decentred theory as an analytical lens in studying UK territorial governance. Not least among them are whether and to what extent responses to new dilemmas impacted the shaping of debates about the nature and role of the devolved legislature in Scotland. EU ‘retained law’
under the terms of the EU (Withdrawal) Act 2018 raised constitutional questions concerning the post-Brexit working of devolution in the UK. Political, legal and constitutional rhetoric and narratives concerning the changing balance between devolved and retained competences in the devolved UK concerning ‘regulatory’ reform. The ‘scrutiny gap’ of new delegated legislation and powers by the UK Government that fall into the components of the devolved Scottish Parliament made part of wider political debates concerning the role and functions of inter-parliamentary relations. Changing and contingent beliefs and traditions informing policy making should continue to be explored at a time of significant change in the governance of the UK and in interpreting the culture and practice of the devolved Scottish legislature.

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