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**Intergovernmental relations in Spain and the United  
Kingdom: the institutionalization of multilateral  
cooperation in asymmetric polities**

by

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## Abstract

Considering their dynamic and asymmetric character, the Spanish and British territorial constitutions seem particularly suitable for a comparative analysis. As regards the framework for intergovernmental relations (IGR), the traditional pattern of cooperation in both countries has been mainly limited to bilateral and ad hoc interactions between the central government and the government of each devolved territory. Even if asymmetry incentives bilateral IGR, Spain and Great Britain have followed parallel paths in order to institutionalize multilateral cooperation. This paper offers a comparative approach to the evolution of IGR in Spain and the UK and, particularly, to the progressive institutionalization of the multilateral ministerial meetings (the Sectoral Conferences in Spain and the Joint Ministerial Committees in the UK). The paper also analyses the recent developments of the Spanish IGR (formalization of bilateral committees; enhanced cooperation for the governance of the long-term care services) and the prospects for their implementation in the UK.

## Key-words

Devolution, asymmetric federalism, intergovernmental relations, ministerial meetings



## 1. Introduction: dynamic and asymmetric devolution in Spain and Great Britain

Spain and the United Kingdom (UK) are both complex multinational polities that have firmly embarked on the path to political decentralisation. Considering their own political and legal traditions, these two devolved systems have explored diverse and very particular constitutional formulas in order to grant the self-government to its territories. The right to self-government (*autonomía*) of the Spanish ‘nationalities and regions’ was granted by the Spanish Constitution of 1978 (art. 2) that also set up the conditions and procedures<sup>I</sup> regarding the foundation of the Autonomous Communities (ACs) and the rules for the reallocation of legislative and executive competences<sup>II</sup>. Between 1979 and 1983, all the Spanish regions and nationalities exercised the right to self-government adopting their own Statute of Autonomy, ‘the basic institutional rule of each AC’ (art. 147 SC), that were formally enacted as constitutional laws<sup>III</sup> by the national parliament (*Cortes Generales*). While in Spain the autonomy of nationalities and regions has been granted by the Constitution, in the UK, politically founded on the principle of parliamentary sovereignty, the devolution to the Celtic nations materialized by means of ordinary Acts of Parliament. The Scotland Act 1998, the Northern Ireland Act 1998, and the Government of Wales Act 1998 and 2006 contain nowadays the territorial constitution of the UK establishing and defining the functions of the devolved bodies<sup>IV</sup>. We should notice that the sovereignty of the UK Parliament remains formally unaffected by the devolution settlements so Westminster preserves the right to amend the devolution Acts and to debate, enquire and legislate on devolved matters. Nevertheless, we should take into account that a political compromise, known as Sewel convention, has determined that ‘the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature’<sup>V</sup>.

The constitutional formulas allowing the self-government of the Spanish and British territories are essentially diverse but the devolution processes in these countries have both resulted highly dynamic and more flexible than the traditional federal systems. Despite the fact that the articles of the Spanish Constitution regarding the territorial organisation have



never been amended, the State of the Autonomies has significantly evolved since its foundation through the reforms of the Statutes of Autonomy promoted by the ACs<sup>VI</sup>. The progressive enhancement of the ACs' executive and legislative powers has again been confirmed by the statutory amendments introduced during the last decade -Valencian Community and Catalonia (2006), Balearic Islands, Andalusia, Aragon and Castile and Leon (2007), Navarre (2010), and Extremadura (2011). Although it could be argued that some of these reforms have already exploited the scope of self-government allowed by the SC, renewed political pressures coming from territorial nationalisms evidences that the devolution dynamic could even exceed its current constitutional boundaries. As an illustration, the Resolution of the Catalan Parliament on self-determination adopted on 27 September 2012 questions the principle of national sovereignty (art. 1.2 SC) and the 'indissoluble unity of the Spanish nation' (art. 2 SC) when it affirms 'the necessity of the Catalan people to decide freely and democratically their collective future and calls on the government to hold a consultation first and foremost within the next legislature'. As Giordano and Roller conclude about the Spanish case, 'devolution is a contingent process that changes, develops, and evolves over time, sometimes throwing up unexpected consequences' (Giordano and Roller 2004: 2179).

The legal framework of devolution has also extensively evolved in the UK. As in Spain, we could easily identify a constant and progressive enhancement of the devolved administrations' executive and legislative powers. The evolution of devolution in Wales clearly evidences this trend. The Government of Wales Act 1998 originally established the National Assembly as a corporate body and limited its functions to the enactment of secondary legislation in certain areas<sup>VII</sup>. The Richard Commission, established by the Welsh Government in 2002, recommended the separation of the executive and legislature as individual legal entities and the enhancement of the National Assembly Legislative's powers. The Government of Wales Act 2006 allowed the National Assembly to gradually assume primary legislative powers in defined areas. The transfer was done in practice by means of Legislative Competence Orders approved by the National Assembly and the UK Parliament (from 2006 till 2010, 15 orders transferring power). The 2006 Act also provided for the National Assembly to assume full legislative powers through an affirmative vote in a referendum that was finally held on 3 march 2011. The Scottish devolution settlement



has also been recently modified by the Scotland Act 2012. Following the recommendations of the Calman Commission, the 2012 Act increases the level of fiscal autonomy and introduces specific taxes including a new Scottish rate of income tax. Considering the great flexibility of the uncodified political constitution of the UK, the British devolution process could develop in any direction. The referendum on independence for Scotland that was held last September is the best example of the absence of constitutional constraints for devolution in the UK. Even if the Scottish rejected the independence, the political agreement between the three main British political parties promising “extensive new powers” for the Scottish Parliament anticipates further deepening of the self-government. Undoubtedly, the ongoing political challenge posed by the diverse national identities within the UK and Spain demanding a proper constitutional accommodation explains the highly dynamic character of devolution in both countries. As Tierney has clearly observed, ‘in plurinational states the political aspirations of sub-state national societies for recognition by the state, for self-government, and for a fuller representational role within the central organs of the state, have increasingly mobilized as demands for constitutional reform in a lively period of politico-constitutional activity over the past 25 years’ (Tierney 2006: 17).

Asymmetry is another common and distinctive feature of devolution in Spain and Britain. The recognition of the historical, cultural and political territorial particularities has resulted in a specific and unique devolution arrangement for each devolved administration. The Spanish Constitution originally envisaged different procedures for the regions and nationalities in order to adopt their Statute of Autonomy and found their respective AC (art. 142, 151 SC). Each of these procedures led to a significantly different initial degree of self-government. We should notice, however, that following the political agreements of 1992 between the two major national parties (*Acuerdos Autonómicos*), clearly inspired by the rationale of territorial harmonization, the asymmetry attenuated during the 90s<sup>VIII</sup>. Nevertheless, the amendments of the statutes of autonomy that came into force from 2006 have evidenced again the differences between the devolution arrangements. On the whole, as Fossas argues, ‘the asymmetry *de facto* which supposes the pluri-national composition of the State has raised the possibility of an asymmetry *de jure*, which implies the setting-up of legal-formal differences between the units of a federation with respect to their powers and obligations, the form of the central institutions, or the application of the federal laws and



programmes' (Fossas 1999: 5). Asymmetry is even more pronounced in the UK. Firstly, the English regions have not followed the devolution path and the system of government of England remains accordingly centralized under the management of the UK Government and Parliament<sup>IX</sup>. As a matter of fact, devolution in Great Britain only affects a small proportion of the population (15%). Secondly, reflecting the differences in the historical and institutional background of Scotland, Wales and Northern Ireland, the devolution arrangements, the powers and functions of the devolved institutions, differ profoundly from one territory to another<sup>X</sup>.

## 2. The unavoidable intergovernmental relations

Another common feature of the Spanish and British devolution is the relevance and the extent of the concurrent powers shared between the different tiers of government. The proliferation of overlapping functions and the consequent need for a minimum coordination in the provision of public services has strongly stimulated interdependence and the progressive formalization of intergovernmental relations (IGR) in both countries<sup>XI</sup>. In fact, 'it is a common argument in federal research that the more powers that are assigned to 'close watertight' compartments, the weaker the incentives for cross boundary interaction. Vice versa, the more the constitution provides for wide areas of concurrent powers, the stronger they are' (Bolleyer 2006: 387).

The large list of shared and concurrent competencies enunciated in the Spanish Constitution (Art. 148 – 149 SC) and the Statutes of Autonomy, which includes essential public policies such as education and health, has irremediably fostered intergovernmental interactions<sup>XII</sup>. Bolleyer has pointed out that other factors such as the fiscal dependency of the ACs<sup>XIII</sup> and the pressure of europeanization operate as strong incentives for IGR (Bolleyer 2006: 387). In addition, the weakness of the Spanish second chamber, the Senate, has increased the need for alternative intergovernmental *fora* granting the representation of territorial interests. The complex distribution of devolved and retained functions in the UK has also stimulated interaction between devolved administrations and the UK Government. Many policies or initiatives of one level of government will require some degree of contact between the devolved administrations and the UK Government. In some



cases joint action may be required<sup>XIV</sup>. McEwen, Sweden and Bolleyer highlight the need of governmental interaction in order to address ‘the disputes, interdependencies and spillover effects resulting from constitutional overlaps’ as well as the need ‘to develop common positions in advance to EU negotiations’ (McEwen, Sweden and Bolleyer 2012: 323).

Even though interdependence is an inherent feature of the Spanish and British devolution, their territorial constitutions did not originally provide a comprehensive institutional framework allowing stable and permanent intergovernmental relations. The traditional pattern of cooperation in Spain and the UK had been mainly limited to irregular and *ad hoc* interactions between the central government and the government of each devolved territory. In Spain, the political priority of the ACs’ governments has traditionally been the reinforcement of their autonomy. The regulation and development of the mechanisms for cooperation were initially postponed in the decentralization process and consequently, IGR were limited to irregular meetings. Regarding the UK, the main concern of the advocates of devolution was also the reinforcement of the self-government and national distinctiveness (McEwen, Sweden and Bolleyer 2012: 323). As a result, the IGR in the UK have been characterized ‘by informality, limited use of informal mechanisms and framework on a heavy reliance on goodwill’ (Trench 2009: 125).

The asymmetric character of the British and Spanish devolution, and therefore the specific institutional arrangements and concerns of each devolved administration, originally led to the preeminence of bilateral relationships<sup>XV</sup>. For instance, the political significance of the Catalan and Basque nationalisms in Spain has constantly favored the bilateral negotiations about the transference of competences to the respective ACs. In the UK, each devolved territory has specific concerns to deal with the UK’s Government and ‘there is little scope to form a common front with the other devolved institutions’ (Trench 2004: 171). In the case of Wales, ‘there was greater need for intergovernmental co-operation given the National Assembly’s dependence on Whitehall and Westminster for legislative change’ (McEwen, Sweden and Bolleyer 2012: 329). Even though informal, irregular and bilateral IGR have traditionally prevailed in Spain and the UK, both countries have followed parallel paths in order to institutionalize multilateral cooperation. This paper proposes a comparative approach to the evolution of IGR in Spain and the UK and to the



progressive consolidation of the institutional arrangements that frame multilateral relationships, particularly the multilateral ministerial meetings<sup>XVI</sup>.

### 3. Building an Institutional Framework for Multilateral IGR

#### 3.1. The principles regarding IGR

Neither the Spanish Constitution nor the Statutes of Autonomy envisaged a framework for IGR. Between the scarce references to IGR in the SC, we could mention the principle of coordination between all the public administrations (art. 103.1 SC)<sup>XVII</sup> and the severe conditions required for the horizontal cooperation agreements between ACs (art. 145 SC)<sup>XVIII</sup>. Nevertheless, the Constitutional Court determined in the early 80s that the principle of cooperation 'is implicit in the very essence of the form of territorial organization of the State that is implanted in the Constitution'<sup>XIX</sup>. We could also mention the resolutions of the Constitutional Court that have declared the duty to share information (Constitutional Court Judgment 80/1995, of June 5) and have concluded that collaboration and coordination is not an excuse to recentralize the competences of the ACs (Constitutional Court Judgment 68/1996, of April 4). The principle of cooperation, as well as the principle of loyalty between all the public administrations, was finally declared in the Law 30/1992 on the Legal System of Public Administrations and Common Administrative Procedure<sup>XX</sup>. We should notice, however, that in this statute cooperation refers to the relations between administrative bodies and it has not been properly conceived as a principle governing the political interactions between national and regional governments.

The arrangements for IGR in the UK 'rest on a non-statutory basis' (House of Lords Select Committee on the Constitution, 2003:11). The principles underlying the relations between the UK Government, the Scottish Executive, the Welsh Assembly Government and the Northern Ireland Executive are settled in a soft-law code, the *Memorandum of Understanding and Supplementary Agreements* (MoU), first published in 2001 and then amended in 2010, 2012 and 2013. The MoU defines itself as a 'statement of political intent' and consequently it 'should not be interpreted as a binding agreement. It does not create legal obligations between the parties'<sup>XXI</sup>. The principles that should guide the IGR are consultation, communication, cooperation and confidentiality (the four C's). Regarding the





principle of communication, the MoU specifies that it operates ‘especially where one administration’s work may have some bearing upon the responsibilities of another administration’<sup>XXII</sup>. With respect to cooperation, the four administrations declare the intention to ‘work together in matters of mutual interests’ - including the possibility ‘to undertake activities on each other’s behalf’<sup>XXIII</sup>. In order to operate effectively, the administrations are also committed to providing each other scientific, technical and policy information. As regards the principle of confidentiality, each administration is bound to ensure that ‘the information it supplies to others is subject to appropriate safeguards in order to avoid prejudicing its interests’<sup>XXIV</sup>.

### **3.2. The ministerial meetings: the Sectoral Conferences (*Conferencias Sectoriales*) and the Joint Ministerial Meetings**

Considering that political autonomy had extended to all nationalities and regions before the end of 1983, the Spanish legislation tried to overcome the constitutional shortcomings establishing an institutional framework for cooperation that integrated all the ACs. A very significant step was the creation of the Sectoral Conferences that were conceived as multilateral *fora* where ‘high ranked officials and political representatives of both central government and *Comunidades Autónomas* meet to discuss sectoral matters in order to maximize intergovernmental cooperation and avoid conflicts’ (Moreno 2002: 405). Even if we find the first reference to the sectoral conferences in the Law 12/1983 on the Autonomic Process (art. 4), the scarce rules governing their composition and functioning are nowadays established in the Law 30/1992 on the Legal System of Public Administrations and Common Administrative Procedure (art. 5). The Sectoral Conferences correspond to a model of vertical cooperation where the Ministers of the Spanish government, who convene and chair the meetings, have ensured a prominent role at the expense of horizontal cooperation between regions. At first, the sectoral conferences were perceived by some ACs as a way to control and to confine their self-government. In fact, the Basque Country and Catalonia’s governments argued before the Constitutional Court that the institutionalization of the sectoral conferences had to be considered as an unconstitutional intervention in their sphere of autonomy. The Constitutional Court confirmed the constitutionality of the sectoral conferences but, at the same time, ruled that the sectoral conferences could not replace the decision-making powers of the ACs over its



own competencies (Constitutional Court Judgment 76/1983, of 5 August). Consequently, the functions of the sectoral conferences were mainly restricted to the exchange of information and the joint examination of problems concerning their shared policies.

The Memorandum of Understanding is supplemented by an agreement (Supplementary Agreement A) on the establishment of a Joint Ministerial Committee (JMC) consisting of UK Government, Scottish, Welsh and Northern Ireland Ministers. The JMC is a consultative body that coordinates the overall IGR and it could convene in plenary meetings or in more specialized functional formats. According to the Supplementary Agreement A, the Plenary JMC will meet at least annually and consist of the Prime Minister (or his representative), who will take the chair, and the Deputy Prime Minister, the Scottish and Welsh First Ministers, each together with one of their Ministerial colleagues, the Northern Ireland First Minister and Deputy First Minister, and the Secretaries of State for Scotland, Wales and Northern Ireland. The post of the Secretaries of State and their offices are conceived as key liaison figures to manage intergovernmental relations. The agreement does not specify a number of functional formats and only refers to a couple of examples: JMC Europe or JMC Domestic. Other functional JMCs have met in areas of health, poverty or knowledge economy. The JMC's terms of reference are: '(a) to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities; (b) where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom; (c) to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and (d) to consider disputes between the administrations'. The JMC are 'the highest and most visible part of a network of a broader collaboration between governments, involving preparation by senior and, below them, more junior officials' (Trench 2008: 237). The Committee of Officials consisting of at least one representative from each administration and a representative of the Secretaries of State for Scotland, Wales and Northern Ireland shadow the JMC and prepares its meetings. The Supplementary Agreement also includes an Annex on the Secretariat to the JMC (Annex A2) comprising staff from the UK Cabinet Office and the devolved administrations.



### 3.3. The disuse of the ministerial meetings

The number of Sectoral Conferences, which have been created at the political initiative of the Spanish government or through ordinary legislation, has progressively increased over the years. A total of 39 Sectoral Conferences cover nowadays all kind of public policies. Nevertheless, the political distrust from the CAs towards the sectoral conferences -strongly directed by the national government-, their limited functions and the irregularity of the meetings initially determined their inefficiency as forums for real cooperation. Moreno considers that the ‘underdeveloped organizational structure of the Sectoral Conferences is one major core of these weaknesses’ (Moreno 2002: 405). Other scholars point out that ‘most of the time the Conferences serve as a forum in which the central government informs the ACs about its programmes and activities, while the ACs can only protest without any substantial impact’ (Bolleyer 2006: 400). As a result, most of the vertical IGR continued to take place on a bilateral and *ad hoc* basis.

Although the plenary JMC was set to be convened annually, it met during the first years (September 2000, October 2001 and October 2002) and then ground to a halt. The functional JMC for Health Policy, the Knowledge Economy and Poverty that were established in 1999 also ceased rather quickly<sup>xxv</sup>. Regarding the JMC’s functional format for poverty, Trench has shown the reluctance of the devolved administrations that were being asked to commit themselves to the UK Government policy proposals ‘without any extra funding being made available, or any other sort of benefit or reward for devolved compliance’ (Trench 2009: 128). The dominance of Labour across the three governments (UK, Scotland and Wales) has been frequently pointed out as a cause of the disuse of the JMC: ‘When there was political congruence between governments it was often better to cooperate as need be bilaterally, and iron out any problems politically. Little purpose was seen to be served by JMCs, and after 2002 they fell into desuetude’ (Gallagher 2012: 201). As a result, IGR have been mainly informal, bilateral and ‘dominated by the issues of the day rather than anything more strategic or long term’ (Trench 2009: 129)<sup>xxvi</sup>.



#### 4. The EU integration as an incentive for multilateral cooperation

Nevertheless, the effectiveness of the Sectoral Conferences, their regularity and the outcome of the meetings, can strongly vary from one to another. Considering that the ACs depends on the Spanish Government in order to access to EU decision-making and the central-state administration relies on the ACs for the effective implementation of EU policies, we could venture to suggest that the progressive Europeanization of the domestic competences has created considerable incentives for both the Spanish government and the ACs to strengthen its cooperative relationships.

In fact, the institutionalization of the Sectoral Conference on European Affairs (1992), and, particularly, the Agreement on the Participation of the CAs on European Matters through the Sectoral Conferences (1994) have significantly favored the cooperative interactions between the two layers of government in those domestic matters affected by the EU competences. This agreement has provided a reliable framework for regular information and participation of the ACs in the formulation and the implementation of EU policies. It has also been defined as a ‘cooperative procedure’ that ‘provides the regions with participatory rights in central-state decision making’ (Börzel 2000: 41). Another agreement of the Sectoral Conference on EU affairs signed on December 9, 2004 made possible the participation of the ACs in four different formations of the EU Council of Ministers: Employment, social policy, health and consumer affairs; Agriculture and fisheries; Environment; Education, Youth, Culture and Sport Council.

In sum, Börzel has convincingly shown how Europeanization ‘drives the emergence of multilateral intergovernmental cooperation’ and favors the transit from ‘competitive regionalism’ to ‘cooperative federalism’ (Börzel 2000: 41).

The framework for IGR on EU policy issues in the UK is also fairly complete. The MoU contains a specific section on EU relations that urges the UK Government to involve the devolved administrations ‘as fully as possible in discussions about the formulation of the UK’s policy position on all EU and international issues which touch on devolved matters’<sup>xxxvii</sup>. In addition, the Concordat on Co-ordination on EU policy issues (Supplementary Agreement B, MoU) sets out in some detail the arrangements for the provision of information, participation in the formulation of UK policy, attendance at EU



Council of Ministers and related meetings, implementation and enforcement of EU obligations, infraction proceedings, representation in Brussels and links with EU institutions, nomination of representatives in the Committee of the Regions and the Economic and Social Committee, and the scrutiny of EU legislation. The JMC(E) has met regularly since 1999, usually about four times a year just before the meeting of the European Council of Ministers (Gallagher 2012: 201). The EU has created a similar need for regular discussions of agriculture matters, particularly while the restructuring of the Common Agriculture Policy has been in the Agenda of the Council of Ministers.

## 5. The recent evolution of the IGR

Progressively, the sectoral conferences have gained political relevance and, even though the regularity and the outcome of the meetings strongly vary from one conference to another, many of them have a prominent role in drafting legislation on shared competencies or adopting common criteria for the implementation of joint plans and programs as well as their funding regime. Up to now, a network of 39 sectoral conferences that cover practically all the policy domains have been set up and they normally rely on the work of committees where national and sub-national officials deal with technical matters. León and Ferrín clearly describe the significant functions that nowadays have been assumed by the Sectoral Conferences: '(a) to agree on the implementation of national legislation that affects regional powers (e.g. education); (b) the approval, follow-up and evaluation of *Planes y Programas Conjuntos* (joint plans and programmes), whereby the central administration and regional governments decide to cooperate for a specific period in the development and financing of a plan or programme in areas where they share responsibilities and have common objectives; (c) to put in place funding regimes (*convenios*) for joint projects; (d) to exchange information between central-state and regional governments; and (e) to formulate joint positions that will be formally considered by the Spanish government at European level, and for the transposition of European policies at regional level' (León and Ferrín 2011: 515).

In order to assess the recent evolution of the multilateral relations in Spain we should mention the case of the governance of the long-term care services granted by the System



for the Autonomy and Care for Dependency (SAAD). A first approach to the institutional framework envisaged for the implementation of the SAAD evidences the strengthening of the cooperative relations in this social policy domain. The functioning of the Territorial Council of the SAAD, where the General State Administration and the ACs can jointly reach binding decisions by majority rule, clearly exemplifies the change of the traditional pattern of multilateral cooperation. The SAAD does not limit the interactions between the central-state administration and the ACs to the mere coordination of their respective functions. A particularly significant function assigned to the Territorial Council is the establishment of the criteria determining the intensity of protection that must be guaranteed to each of the beneficiary of the SAAD (according to his degree of dependency)<sup>xxviii</sup>. In order to guarantee a minimum level of protection across the country, the binding decision adopted by the Territorial Council about these criteria will be finally enacted by the Spanish Government by means of Royal Decree. Even if the hard-law resolution formally corresponds to the Spanish Government, it is also clear that the Territorial Council has been conferred, for the very first time, with an actual decision-making power. We could argue, however, that the *sui generis* normative power of the Territorial Council of the SAAD could contradict the Constitutional Court decision that confined the sectoral conferences functions to the exchange of information and the joint examination of problems concerning their shared policies (Constitutional Court Judgment 76/1983, of 5 August). Another important difference between the Territorial Council of the SAAD and the multilateral sectoral conferences, where decisions are always reached by consensus, is that the formal agreements and the political proposals could be finally adopted by the affirmative vote of a majority of the representatives of the General State Administration and a majority of the representatives of the ACs (article 12.2 of the Rules of Process). The majority rule dramatically alters the traditional consensual character of the multilateral relationships.

The trend towards multilateral cooperation seems to be confirmed by the ever-growing amount of joint agreements (*convenios*) between the central and the autonomic administrations and other initiatives at the highest political level such as the Conference of Presidents. This forum, convened for the first time in October 2004 by the Spanish Prime Minister Zapatero, brings together the Presidents of the ACs and the cities of Ceuta and



Melilla and has been conceived to reach consensus and adopt political resolutions on matters of particular relevance to the autonomic system. The rules of procedure adopted during the fourth meeting held on December 2009 provided the institutionalization of the Conference of Presidents which should be convened by the Prime Minister at least once a year. Nevertheless, after that meeting the Conference has only met one more time (October 2012) showing that this attempt of institutionalization has clearly failed.

The progressive consolidation of the multilateral cooperation in Spain does not mean, however, that bilateral relations are no longer significant. Particularly if we consider that the Statutes of Autonomy amended during the last decade have institutionalized the bilateral commissions which are intended to enable permanent collaboration between the individual ACs and the Spanish government. For instance, the Statute of Autonomy of Catalonia adopted in 2006 (which has clearly inspired the successive statutory reforms) entrusts the *Generalitat* - State Bilateral Commission with the deliberation and the adoption of joint agreements regarding a long list of matters that could affect the interests and powers of the *Generalitat* (art. 183). This legislative strategy enhancing the bilateral relations, and consequently the asymmetry of the State of the Autonomies, is supported by another provision of the Catalan Statute which declares that ‘the *Generalitat* is not bound by decisions taken within the framework of multilateral voluntary collaboration mechanisms with the State and with other autonomous communities with regard to which it has not manifested its agreement’ (art. 176.2).

In recent years, the institutionalization of multilateral IGR has progressed in the UK too. The JMC Plenary sessions have been held annually since 2008. The JMC has begun meeting in a new and more functional format, the JMC (Domestic), that convenes the Deputy Prime Minister and the most relevant portfolio Ministers of each devolved administration two or three times a year. In 2010, the JMC (Domestic) commissioned the revision of the Memorandum of Understanding that has settled additional mechanisms for dispute resolution. In addition, the administrative machinery supporting the intergovernmental meetings has grown. According to McEwen, Sweden and Bolleyer, ‘the resurrection of the JMC plenary form and in the incarnation of its domestic format necessitated a modest increase in investment in the resources required to service IGR’



(McEwen, Sweden and Bolleyer 2012: 328). One factor that may have contributed to the formalization of IGR is the end of the political congruence between UK Government and the devolved administrations. The arrival of nationalist parties to the Scottish and Welsh governments in 2007 and the establishment of the conservative-liberal-democrat coalition government in the UK have influenced the dynamics of the IGR. The informal channels, traditionally supported on political reliance, could have conceded some space to the formalized structures in order to channel the increasingly adversarial relations. Nevertheless, ‘party political incongruence has had a modest, but not overwhelming, impact of the formal processes through which IGR are conducted’ and consequently the ‘renewed intergovernmental machinery has not replaced the day-to-day informal interaction’ (McEwen, Sweden and Bolleyer 2012: 328). Many scholars continue to demand a more consistent system of IGR: ‘The greater use of formal mechanisms of intergovernmental relations would create a forum to air and resolve some of the thorny issues of divergent citizenship rights that are starting to emerge’ (Trench 2009: 133). It is also clear that further institutionalization would ensure greater democratic control, visibility and transparency of IGR

## 6. Final remarks

We could derive some concluding remarks from this comparative analysis. Spain and Great Britain have followed parallel paths in order to institutionalize multilateral cooperation. In both countries, the ministerial meetings have been conceived as the main institutional *fora* for multilateral cooperation. The Spanish Sectoral Conferences and the British JMC are consultative bodies, ruled by a widely open legal framework, that were mainly promoted by the central states in order to convene all the devolved administrations. Nevertheless, and considering the asymmetric character of the devolution settlements, the particular interests of each devolved administration have always favored ad hoc and bilateral IGR. We have also shown how the EU integration process has contributed to strengthening multilateral cooperation and the formalization of IGR in both countries. In fact, the intensity and regularity of the ministerial meetings on those matters affected by the EU integration seems considerably higher.





The recent evolution of IGR in Spain and the UK confirms the trend towards further formalization. However, the proliferation of ministerial meetings and the institutionalization of multilateral IGR are more pronounced in the case of Spain. We could argue that this is the result of a more dilated experience of devolution and that Britain might follow a similar path in the years to come. But we have to consider some structural differences pointing in another direction. First, the high number of Spanish devolved administrations makes bilateralism an unsustainable way to maintain IGR. The UK Government could more easily continue to manage bilateral interactions with the three devolved administrations. We should also mention that asymmetry is much deeper in Great Britain: ‘the UK will remain a state of unions, and relationships within it will continue to have the characteristics of a set of bilateral deals’ (Gallagher 2012: 211). Finally, the use of informal mechanisms based on political reliance is a feature of the UK constitutional culture and ‘provides a strong illustration of the UK concept of good governance and its reliance on soft law or quasi-legislation’ (Oliver 2003: 252).

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<sup>I</sup> As Arganoff and Ramos have clearly explained, ‘the route to regional autonomy was faster for the historic territories (based on their Second Republic statutes and plebiscites) of Catalonia, the Basque Country, and Galicia. These three territories and Andalucía acceded to AC status through the fast route and became known as Article 151 ACs (...) whereas the other, Article 143.1 territories took on regional powers more slowly and somewhat differently. By 1983, however, all of Spain's fifty provinces were divided into seventeen ACs’ (Arganoff and Ramos Gallarín 1997: 3)

<sup>II</sup> It should be noted that the ‘SC does not establish a territorial design of the nationalities and regions but rather lays out the conditions by which the regions may decide to proceed with the practice of self-government’ (Giordano and Roller 2004: 2167)

<sup>III</sup> According to the Spanish Constitution (art. 81) the constitutional laws (*leyes orgánicas*) “are those relative to the exercise of fundamental rights and public liberties, those approved by the Statutes of Autonomy and the general electoral system, and the others provided for in the Constitution”. The approval, modification, or repeal of constitutional laws require an absolute majority of the House of Representatives in a final vote on the entire bill.

<sup>IV</sup> ‘The powers of the Scottish Parliament (and Northern Ireland Assembly) are framed so that all matters are within their legislative competence except for those that are reserved to the UK (in Scotland) or excepted or reserved (in the case of Northern Ireland). Therefore, they can do anything except what is expressly forbidden’ (Trench 2007a: 50-51).

<sup>V</sup> ‘The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will



be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government' (MoU, para. 14)

<sup>VI</sup> 'The process of the decentralization of the Spanish state has not ceased with the drafting and eventual enactment of the 1978 Constitution. It has been one of evolution, in which the regions have negotiated and renegotiated their statutes and competencies with the central government' (Giordano and Roller 2004: 2178-2179)

<sup>VII</sup> 'The Shortcomings of the initial arrangements in which the Assembly, including the Administration, constituted as a single body corporate, were widely acknowledge, most notably in the Richard Commission Report published in 2004' (House of Commons 2009: 8).

<sup>VIII</sup> 'The second Autonomy Agreement of 28 February 1992 subscribed to by the Spanish Socialist Party (PSOE) and the Popular Party (PP), and their translation into the Organic Law 9/92, of 23 December, through which the powers of several Autonomous Communities were broadened. The form and content of this legal-political operation provoked a long debate, not so much about the 'widening' but about the 'equalisation' of powers' (Fossas 1999: 4-5).

<sup>IX</sup> 'Originally, the Labour government had intended the devolution project to be extended to English regions if there was popular support. Consequently, in May 2003, the Regional Assemblies (Preparations) Act was passed, paving the way for referenda to be held across England to gauge support for elected regional assemblies. In the event, following an unexpected 'No' vote in the first such referendum held in the Northeast of England, plans for English devolution effectively have been shelved' (Bulmer et al. 2006: 75-76)

<sup>X</sup> 'Asymmetry runs through every clause and schedule of the devolution legislation, from the fundamentals of powers and functions down to the niceties of nomenclature (Hazell 2000: 268); 'it is very hard to generalize about what devolution means. It is different for each of Scotland, Wales and Northern Ireland, in many important respects. The devolution arrangements as a whole are profoundly asymmetric' (Trench 2007a: 55).

<sup>XI</sup> Agranoff defines IGR as 'the working connections that tie central governments to those constituent units that enjoy measures of independent and inter-dependent political power, governmental control and decision making' (Agranoff 2004: 26); According to Bolleyer et al., 'the term 'relations' can refer to exchanges between governments, to patterns of interactions and to structures that channel government interaction' (Bolleyer et al. 2010: 3).

<sup>XII</sup> 'In Spain only 4.8% of the policy areas (2 of 42) belong to this type of competencies; at the same time, country experts point out that concurrency in the Spanish case is much more pronounced than these figures indicate. In fact, referring to the importance of competencies, core jurisdictions, such as education and health, are concurrent' (Bolleyer 2006: 387).

<sup>XIII</sup> 'The limited taxing power of the Autonomous Communities (ACs) and their dependency on grants provides a strong stimulus to co-operate with the centre. Accordingly, the two Spanish territories Navarre and Basque Country, which have more extensive taxing rights than the other ACs, participate far less in *convenios*, AC-federal agreements than do the other territories' (Bolleyer 2006: 389).

<sup>XIV</sup> House of Lords Select Committee on the Constitution, 2003: 11.

<sup>XV</sup> It has been commonly argued that 'symmetry is more conducive to multilateral interaction, regular co-decision and the institutionalization of IGR than asymmetry, which puts a strong premium on bilateralism and flexibility' (Bolleyer et al. 2010: 6).

<sup>XVI</sup> As Giordano and Roller have noted, 'evolution in the UK is an ongoing process, which is why is vital to compare the experiences of other European countries that share longer histories of devolution and can offer potentially important insights for the future trajectories of change in the UK' (Giordano and Roller 2004: 2163).

<sup>XVII</sup> Art. 103.1 SC: The Public Administration shall serve the general interest in a spirit of objectivity and shall act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, and in full subordination to the law' (art. 103.1 SC).

<sup>XVIII</sup> Art. 145 SC: The Statutes of Autonomy may provide for the circumstances, requirements and terms under which Self-governing Communities may reach agreements among themselves for the management and rendering of services in matters pertaining to them, as well as for the nature and effects of the corresponding notification to be sent to the *Cortes Generales*. In all other cases, cooperation agreements among Self-governing Communities shall require authorization by the *Cortes Generales*.

<sup>XIX</sup> Constitutional Court Judgment 18/1982, of May 4.

<sup>XX</sup> Articles 3.2 and 4.1 of the Law 30/1992 on the Legal System of Public Administrations and Common Administrative Procedure.



<sup>XXI</sup> MoU, paragraph 2.

<sup>XXII</sup> MoU, paragraph 4. In particular, ‘the administrations will seek: to alert each other as soon as practicable to relevant developments within their areas of responsibility, wherever possible, prior to publication; to give appropriate consideration to the views of the other administrations; and to establish where appropriate arrangements that allow for policies for which responsibility is shared to be drawn up and developed jointly between the administrations’ (MoU, paragraph 5).

<sup>XXIII</sup> MoU, paragraphs 8 – 9.

<sup>XXIV</sup> MoU, paragraph 12.

<sup>XXV</sup> ‘The Knowledge Economy and Health formats met several times in 1999 and 2001, then simply stopped. (...) The poverty format also met several times in 1999-2000 then stopped, only to meet again in October 2002, announce an ambitious work program for the coming year, and then not meet again. In late 2002 there were plans, behind the scenes, for a format of the JMC for the Economy – but this has never met either. This pattern suggests that the chief factors behind such meetings are the concerns and priorities of UK senior ministers. If they can embrace the JMC in the service of one of their initiatives, well and good; if it does not serve that purpose, they will not use it’ (Trench 2007b: 166 – 167)

<sup>XXVI</sup> ‘Intergovernmental relations consist of nothing other than ad hoc interactions triggered by the issues of the day (which usually arise in London rather than in the devolved capitals). It means that there is no setting to deal with one of the key functions of the JMC – to consider how non-devolved functions affect devolved matters and *viceversa*. Given the structure of the devolution settlement this is a serious absence; not only is it harmful in itself, but it sends a signal to Whitehall officials that such issues are unimportant. The informality of intergovernmental relations makes it all the harder to the devolved administrations to make their voices heard on matters which affect them but which at retained at UK level’ (Trench 2009: 131)

<sup>XXVII</sup> MoU, paragraph 19

<sup>XXVIII</sup> We should also mention that, because of the persistent economic crisis, the Spanish Government adopted a Royal Decree (*Real Decreto-ley 20/2012, de 13 de julio*) that has sensibly reduced the maximum amount of the financial help for the dependents’ care and has simplified the intergovernmental structures blending the Territorial Council of the SAAD with the preexistent Sectoral Conference of Social Services.

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