

How do Federal States Deal with the Need for Coordinated Policing and Public Security?

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1. Introduction

The paper deals with the formal and informal arrangements which have evolved in the UK and India to coordinate the needs of policing and public security. It deals with the common approaches to security and policing in the case of Scottish and UK governments, the devolution of power and institutional arrangements with regional legislatures in the UK. It also deals with the constitutional and other institutional arrangements for the purpose of coordination between the Union and the states in India and the future challenges in matters related to policing and public security.

2. Common Approaches to Security and Policing: The Case of Scottish-UK Government Arrangements

The paper considers the extent to which there are common approaches to security and policing in the UK and in particular considers the extent to which common structures have developed between the Scottish and UK governments. The process of legislative decentralization is a relatively recent development in the UK with

the process of territorial constitutional change having begun in 1999 following the election of a Labour government in 1997. Prior to 1999 administration of certain areas of public policy was devolved to three territorial departments in the UK: the Northern Ireland Office, Scottish Office¹ and Wales Office. In effect, the process of devolution in the UK involved the establishment of legislatures to oversee the competencies of these former territorial departments of the UK government. Accordingly, the UK currently has three devolved legislatures with varying degrees of legislative autonomy in Northern Ireland, Scotland and Wales.²

As a consequence, 85 per cent of the UK population continues to be governed directly by the UK government in London, while the remaining 15 per cent are governed by a more complex set of institutional arrangements with “regional” legislatures dealing with broadly domestic policy issues and a UK Parliament dealing with the “high” issues of state such as foreign affairs and macro-economic policy. Traditional features of federal systems of government such as a written constitution are not present in the UK case due to the territorial variation in the manner in which government is exercised in different jurisdictions. Given that the vast majority of the UK population continues to be governed within the structure of a unitary state, then at most the political structure of the UK can be described as being one of “asymmetrical federalism”. Although in contrast to other European states, such as Belgium and Spain, where there are variations in the extent of power devolved to sub-national legislatures, the extent of the asymmetry in the UK position is more pronounced given that power is only devolved to

¹ Prior to the creation of the Scottish Parliament in 1999, the territorial department responsible for Scottish domestic affairs was termed the Scottish Office, and between 1999 and May 2007 the Executive arm of the Scottish administration was termed Scottish Executive. Since May 2007, following the election of a Scottish National Party (SNP) minority Government, the Scottish administration has been termed the Scottish Government. These terms will be used throughout this paper depending on the particular time period being referred to.

² While recognizing that legislatures do exist in the Isle of Man and the UK Channel Islands.

certain aspects of the state reflecting the pluri-national identities present within the UK. In order to give a sense of the extent of variation in “national identity” between the constituent parts of Britain Tables 1 and 2 provide some data on national identity.

Table 1: Trends in “Forced Choice” National Identity (1999-2003)

	1997	1999	2001	2003
<i>England</i>				
English	34	44	43	38
British	59	44	44	48
<i>Scotland</i>				
Scottish	72	77	77	72
British	20	17	16	20
<i>Wales</i>				
Welsh	63	68	57	60
British	26	14	31	27

Source: Jeffrey, C (2006) p. 80.³

Table 2: Moreno National Identity (2003)

	<i>Scotland</i>	<i>Wales</i>	<i>England</i>
X, not British	31	23	17
More X than British	34	28	19
Equally X and British	22	30	31
More British than X	4	9	13
British, not X	4	10	10

Note: X refers in each case to the nation in the respective columns, so 31% of Scots felt Scottish, not British, 23% Welsh, not British, etc.

Source: Jeffrey, C (2006), p. 81.

This paper first outlines the extent of the devolution of powers to Scotland and the some of the mechanisms which have been put

³ C. Jeffrey, “Devolution and Social Citizenship: Which Society, Whose Citizenship?” in S. Greer, ed., *Territory, Democracy and Justice*, Palgrave, London, 2006.

in place to deal with intergovernmental relations between the Scottish and UK governments. Second, it considers the extent to which there are common approaches to policing and security between the Scottish and UK governments is considered.

2.1 *Scottish Devolution*

The parameters of the powers devolved to Scotland are set out in Schedules 4 and 5 of the Scotland Act 1998 which details the powers that are reserved to the UK government. All powers that are not listed as being reserved, therefore, fall within the competence of the Scottish Parliament. In broad terms, the following powers are reserved to the UK government:

- The Constitution
- Foreign affairs
- Defence
- International development
- The Civil Service
- Financial and economic matters
- National security
- Immigration and nationality
- Misuse of drugs
- Trade and Industry
- Various aspects of energy regulation (e.g. electricity, coal, oil, and gas; nuclear energy)
- Various aspects of transport (e.g. regulation of air services, rail, and international shipping)
- Social security
- Employment
- Abortion, genetics, surrogacy, medicines
- Broadcasting
- Equal opportunities

Some of the main devolved policy areas are:

- Health and social work
- Education and training

- Local government and housing
- Justice and police
- Agriculture, forestry, and fisheries
- The environment
- Tourism, sport, and heritage
- Economic development and internal transport

From this it can be seen that while policing is a responsibility of the Scottish government, national security is a function of the UK government. The resulting need for coordination between the governments is dealt with through two principal mechanisms, termed Concordats and Joint Ministerial Committees.

2.1.1 *Concordats*

The 2002 Memorandum of Understanding⁴ between the UK Government and Scottish Ministers sets out the principles which underlie relations between the UK and Scottish Governments. The Memorandum states that the document is: “a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties. It intended to be binding in honour only.”

The Memorandum outlines a number of ways in which the UK Government and the devolved administrations will work together, namely, through communication, consultation and co-operation with each other on matters of mutual interest and through the exchange of information, statistics and research. In addition, five supplementary concordats were agreed on: the “Joint Ministerial Committee”, the Coordination of European Union Policy Issues, Financial Assistance to Industry, and International Relations and Statistics. Lastly, each UK government department has agreed a concordat with the Scottish government.

2.1.2 *Joint Ministerial Committees*

The Memorandum of Understanding also acknowledged that a degree of central coordination was required and that a Joint

⁴ Accessible at: <http://www.scotland.gov.uk/library2/memorandum/>

Ministerial Committee (JMC) should be established to provide this. The terms of reference for the JMC 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 part of the United Kingdom;
- (c) to keep arrangements for liaison between the UK government and the devolved administrations under review; and
- (d) to consider disputes between the administrations.

According to the supplementary agreement of the Memorandum of Understanding, the JMC will meet at least once a year and would be chaired by the Prime Minister or his representative. The Deputy Prime Minister, the Scottish and Welsh First Ministers, each together with one of their ministerial colleagues, and the Northern Ireland First Minister and Deputy First Minister will also attend. In addition, other ministers may attend where appropriate.

According to the agreement, meetings of the JMC will be held for two purposes, “to take stock of relations generally and of the way in which the devolution arrangements are working in a particular area; and to address particular issues or problems”.

The Joint Ministerial Committee Plenary has met on three occasions⁵ and the Joint Ministerial Committee on Europe has met on twenty-eight occasions. In addition, there have been four Joint Ministerial Committee meetings on the subject of health, two on the knowledge economy and three on poverty.⁶ It is important to note that a Joint Ministerial Committee does not exist to address the issue of either policing or security.

⁵ Scottish Parliament Question S3W – 907.

⁶ Scottish Parliament Questions S2W – 22136 and S2W – 6045.

2.2 Policing and Security Policy

Delineating the devolved/reserved functions with regard to policing and security functions is relatively straightforward. Policing in Scotland is a devolved matter and responsibility for policy on criminal justice and the administration and funding of policing is a responsibility of Scottish Ministers. Accordingly all eight “territorial” police forces (i.e. police forces based wholly in Scotland) are responsible ultimately to the Scottish government. There are, however, a number of other police forces operating in Scotland which are the responsibility of the UK government. These are:

- British Transport Police – police force for the railways providing a service for rail operators, their staff and passengers across Britain
- Ministry of Defence Police – provides security within Ministry of Defence property across Britain (e.g. the nuclear submarine base at Faslane in Scotland)
- Civil Nuclear Constabulary – provides protection for nuclear materials on designated UK nuclear licensed sites and in transit

The one exception to this picture in terms of police forces is a grouping of police forces termed “Special Branch” which are based within Scottish police forces but can carry out reserved functions. Special Branch is responsible for a range of activities in relation to terrorism, espionage, subversion, serious crime and threats posed to public order. In this context Special Branch operate closely with the UK Security Service (MI5). Special Branch officers are responsible to the Chief Constable of the relevant Scottish police force. However, where Special Branch officers are engaged in activity which relates to reserved functions, such as counter-terrorism, then these officers will be responsible for the delivery of UK government policies. The Chief Constable of the police force involved is required to give his/her agreement to these activities. In effect, the policy on issues such as counter-terrorism is reserved, but the delivery is devolved. The Home Office (the UK government department res-

possible for policing), Scottish Executive and Northern Ireland Office agreed to guidelines⁷ covering the work of Special Branch in the UK reflecting the different tiers of government to which the service works.

The Home Office and the Scottish Executive have agreed a “concordat” establishing a framework for cooperation between the two bodies. The 2002 Concordat summarizes the relationship between the two bodies as follows:

Under the Scotland Act 1998 considerable areas of work for which the Home Office is responsible in England and Wales are the responsibility of the Scottish Executive in Scotland. To a large extent this reflects the fact that Scotland has always had its own distinct system of civil and criminal law and procedures, with separate legislation governing the police, prison, and probation services. . . .

Even in areas which are the responsibility of the Scottish Executive in Scotland, notably most civil and criminal law and procedures, overlaps of interest will arise either on a regular basis, or from time to time. The purpose of this Concordat is to indicate the elements of good practice which should inform contacts between the two administrations in such cases, so as to encourage good communication, promote understanding of the operation of policy and practice in the respective jurisdictions and ensure that the actions of one administration do not unwittingly create difficulties for the other. (Scottish Executive, 2002, p. 1)

The Concordat goes on to list devolved issues, reserved issues, reserved issues which are the subject of executive devolution, and areas where joint working will be particularly relevant. Reserved issues (subject to executive devolution) and areas of joint working which are most relevant to this paper are listed in Appendix I.

⁷ Scottish Executive (2004) “Guidelines on Special Branch Work in the United Kingdom”. Accessible at: <http://www.scotland.gov.uk/Publications/2004/03/19162/35117>

In terms of security policy, the distinction between reserved and devolved issues is even clearer than that existing in terms of policing. The UK government agency responsible for internal national security is the “Security Service” more commonly known as MI5. Again the Home Office is the responsible UK government department. The Concordat between the Home Office and the Scottish Executive makes no mention of security issues reflecting that security is an entirely reserved issue, although the use of intercept information relating to devolved issues in Scotland (i.e. serious crime) does require the authorization of Scottish Ministers. However, in relation to national defence more generally the, Scottish government has signed a Concordat with the Ministry of Defence (UK Government). The Concordat states that:

All matters relating to the defence of the United Kingdom remain the direct responsibility of the UK Government. This is to provide for a strong internal defence policy and a seamless and effective defence capability for the UK as a whole, and has been achieved by the reservation of defence matters to Westminster in the Scotland Act 1998. (p. 3)

The Concordat states that it seeks to ensure that the:

- Scottish Ministers take into account the need for the unimpeded conduct of the defence of the UK, and the interests and responsibilities of the Secretary of State for Defence and the Armed Forces, when framing and implementing Scottish legislation or otherwise undertaking actions and functions within their competence.
- interests, rights and responsibilities of the Scottish Ministers are recognized and taken into account by the Secretary of State for Defence in framing and implementing UK defence policy and activities likely to have an impact in Scotland. (p. 2)

The Concordat proceeds to list a range of activities where cooperation takes place between the Ministry of Defence and the Scottish Executive. Appendix II reproduces this list of activities.

In addition to formal protocols, a range of informal contacts exist between Scottish Ministers and officials with the UK Government. For example, recent high profile events such as the car-bomb attack on Glasgow Airport witnessed the participation of Scottish Ministers in the UK government emergencies committee termed “COBRA”.⁸ Although there is no legislative requirement for such participation it is understood that such participation is now expected in situations where an event affects Scotland.

3. Conclusion

Legislative devolution in the United Kingdom is a relatively recent process that only affects a minority of the UK population. This is reflected in the UK largely retaining the structure of a unitary state lacking institutions and mechanisms for formally ensuring the mediation of territorial disputes which tend to be found under federal systems of government. Nevertheless, the creation of concordats and Joint Ministerial Committees has created mechanisms for interaction between the UK government and devolved administrations. To some extent, in relation to Scotland, these mechanisms were not so essential when the same political party was in power in both London and Edinburgh. However the election of an SNP minority government in Edinburgh may see a greater use of the mechanisms in future.

The devolved nature of policing and reserved nature of security ensures that there is a fairly limited scope for joint working across these policy areas. However, it is also evident that where cooperation has been necessary, for example in relation to specific events such as the outbreak of foot and mouth disease or the car bomb attack upon Glasgow airport, that fairly significant levels of cooperation do take place despite there being no “formal” necessity for such cooperation to take place. In part, these forms of co-operation reflect

⁸ COBRA meetings are held in the Downing Street and the acronym refers to “Cabinet Office Briefing Room”. Both the Scottish First Minister, Minister for Justice and the Lord Advocate (Chief Public Prosecutor in Scotland) have participated in COBRA meetings via video-link.

aspects of UK political culture with regard to the importance of non-legislative conventions in shaping political processes. Moreover, the spheres of policing and security are shaped by a considerable degree of consensus across political parties when a particular policing or security “event” takes place thereby making co-operation between tiers of territorial government within the UK relatively uncontroversial. It may be that cooperation across other policy spheres, such as developing common positions on European Union debates, may prove more testing and “contested” for existing processes of territorial cooperation and negotiation within the UK state.

Appendix I

Concordat between the Scottish Executive and the Home Office

Reserved Matters which are the Subject of Executive Devolution

- Administration of certain aspects of firearms licensing (licensing of rifle clubs, authorization to hold prohibited weapons or ammunition, museum licences)
- Payment of grants to police authorities for expenditure on safeguarding national security
- Establishment and operation of police and fire pension schemes
- Extradition casework in Scottish cases
- Authorizations under the Interception of Communications Act 1985 for the purpose of preventing or detecting serious crime for targets located in Scotland
- Authorizations under the Intelligence Services Act 1994 for the purpose of preventing or detecting serious crime for targets located in Scotland
- Authorizations under the Wireless Telegraphy Act 1949 for the purpose of preventing or detecting serious crime

Joint Working

- The planning and implementation of responses to civil and other emergencies, where such emergencies affect, or may affect, the whole of Britain
- Changes affecting the policy or procedures governing the release of life or determinate sentence prisoners
- The cross border transfer of prisoners, offenders subject to supervision and restricted patients
- Other cross border issues relating to mutual police assistance and powers of arrest and search

Appendix II

Areas of Cooperation between the Ministry of Defence and the Scottish Executive

1. Radioactivity, explosives and other dangerous materials (use, storage, carriage, disposal)
2. Nuclear accident response and other emergency planning
3. Matters affecting training (including training on private land, and land clearance for adventurous training)
4. General policing and security matters
 - Counter-terrorism
 - Police/Military Joint Tactical Doctrine liaison on policy guidance for the police and military for the protection of Key Points and preparations and activation of Government Defence Agreement plans
 - Arms control (including liaison on receiving arms control inspections)
 - Security issues (including Special Branch, liaison with Army HQ Scotland)
 - Firearms Act (liaison with Army HQ Scotland)
 - Vetting investigations undertaken by Defence Vetting Agency for Scottish Police
 - Defence courier services (occasional assistance)

- General liaison with Ministry of Defence Police and RAF Police, as police forces with authority and operating in Scotland, on all police matters
 - General liaison between Procurator Fiscal and RAF Police
 - Radio site clearance and control of jamming
5. Shipping (including dockyards, harbour regulations, powers of port authorities)
 6. Aviation (largely reserved, but including MoD use of airports, etc.)
 7. Search and rescue and Mountain rescue
 8. Fishery protection
 9. Meteorology, including weather radar
 10. Military aid to the civil authorities
 11. Procurement Issues
 12. General defence activities