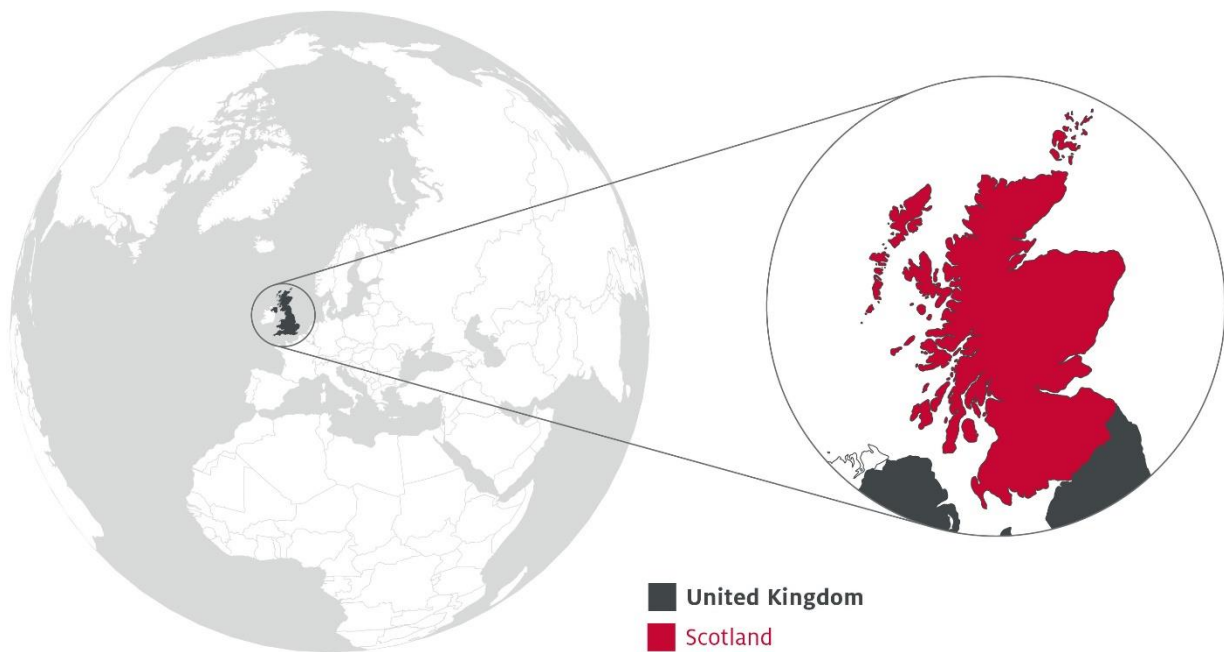




## Scottish Devolution: Autonomy at its Limits?

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# **Contents**

## **1. Essential Facts and Figures**

## **2. Autonomy and State Structure**

## **3. Establishment and Implementation of Autonomy**

## **4. Legal Basis of Autonomy**

4.1. Devolution and Parliamentary Sovereignty

4.2. The Sewel Convention

## **5. Autonomous Institutions**

5.1. The Scottish Government

5.2. The Scottish Parliament

5.3. The Scottish Judiciary

## **6. Autonomous Powers**

## **7. Financial Arrangements**

## **8. Intergovernmental Relations**

## **9. Intergroup Relations within the Autonomous Entity**

## **10. Membership, “Quasi-citizenship” and Special Rights**

## **11. General Assessment and Outlook**

Bibliography

List of abbreviations

About the author

## 1. Essential Facts and Figures

Scotland is a small nation, located on the northern half of the island of Great Britain. The territory and historic borders of Scotland have been remarkably stable over time. In recent years, Scottish political life has been consumed by questions of independence, the establishment of an independent Scottish state, or remaining within the United Kingdom (hereinafter the UK or the Union). In 2014, a referendum was held on the question of Scottish independence. Although the proposal was rejected by 55% of the population, the issue of Scotland's constitutional future remains a live one, with far-reaching implications for both Scotland and the UK.

The population of Scotland, as of 2021, was 5.5 million people (National Records of Scotland 2022). Population growth in Scotland has been driven by net inward migration from both the United Kingdom and outside of the United Kingdom. According to mid-2021 estimates, Scotland's population by nationality was 4,997,000 British, and 397,000 non-British. Of the non-British population, 321,000 held a European Union nationality, while 165,000 were non-EU. Poles were the largest non-British nationality, forming 16% of the non-British population (National Records of Scotland 2021). According to the 2011 census,<sup>1</sup> Scotland's population is 96% white (Scottish Government 2011). 91.8% of people identified as "White: Scottish" or "White: Other British".<sup>2</sup>

Assertions of national identity are important to Scottish political life. Changes have been identified in the way in which people articulate their identities in recent years, with a greater proportion, depending on the question asked, expressing a more explicit Scottish identity. However, this Scottish identity often sits quite comfortably alongside British one (McCrone 2020, 27).

On forced choice questions, in which respondents are asked to identify a single identity, we see a decline of British identities in Scotland from the 1970s onwards. When the question was asked in 1979, around 40% of the population opted for a British rather than Scottish identity. This fell below 30% in the years leading up to *devolution*<sup>3</sup> and currently sits at around 20% (Park et al. 2013).

On the more nuanced question, the so-called *Moreno question*, which was informed by political scientist Luis Moreno's work on Spain and later extended to other multinational states, we find a large percentage of the population who express Scottish and British identities simultaneously. In this style of question, respondents are asked to identify their dominant identities, with responses

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<sup>1</sup> The Scottish census took place in 2022, delayed by one year as a result of the COVID-19 pandemic. At the time of writing (December 2023), the full census results are not available and this analysis therefore relies on data from the 2011.

<sup>2</sup> This contrasts with England and Wales, where 82% of the population is White, whilst 18% belong to black, Asian, mixed, or other ethnic groups (UK Government 2021).

<sup>3</sup> Devolution is the transfer of powers from the centre to the sub-state level. For details, see <https://www.parliament.uk/site-information/glossary/devolution/> (accessed October 31, 2023).

including Scottish not British, More Scottish than British, Equally Scottish and British, More British than Scottish, and British Not Scottish.

In successive social attitude polling, researchers find that Scottish is more strongly felt, with a much smaller proportion of the population identifying as more or wholly British. This has not, however, changed significantly over time, in response to devolution or other significant political events. At the height of the 2014 campaign, Scottish and British identities remained relatively stable (ScotCen Social Research 2014). While comprehensive data is not available given the small percentage of the population, qualitative studies suggest that participants of Pakistani descent claim a hyphenated Scottish-Pakistani identity, with these identities sitting comfortably alongside one another (Emejulu 2013).

**Table 1: National identities over time**

	Year						
	1992	1999	2003	2009	2011	2014	2016
Identity	% of Scotland's population						
Scottish not British	19	32	31	27	31	23	27
More Scottish than British	40	35	35	31	34	26	31
Equally Scottish and British	33	22	22	26	24	32	33
More British than Scottish	3	3	4	4	4	5	4
British not Scottish	3	4	4	4	3	6	6

Source: ScotCen Social Research (2014) and election studies, summarized in McCrone (2020: 28).

Where national identities are most salient is in voting behavior. Those who identify as exclusively Scottish are much more likely to support the Scottish National Party (SNP), with 64% of those who identified in this way voting for the SNP in 2016; 28% voted for the Labour Party. 66% of those who were more Scottish than British voted for the SNP, with roughly a quarter voting for Labour (McCrone 2020, 32). However, more detailed analysis suggests nuance, with parties drawing votes from people across the identity spectrum, suggesting a complex interaction of identity, ideology, and constitutional preferences shaping voting patterns.

When we look at the voting in the 2014 referendum, the results were more straightforward. The more Scottish people felt, the more likely they were to be supporters of independence, and vice versa. 84% of those who felt exclusively Scottish voted Yes, whilst 87% of those who felt exclusively

British voted No. Three quarters of those who were equally Scottish and British were Yes voters, while the More Scottish than British split 61% to 39% (McCrone 2020, 33).

Unlike in Wales, or other sub-state nationalist communities including Flanders, Catalonia, the Basque Country, or Quebec, linguistic differences have played less of a role in Scotland's nationalist project. English is the dominant language with 98.6% of the population speaking English (Scottish Government 2011). Efforts have been made to increase the proportion of the population speaking Gaelic (McLeod 2020). Efforts include Gaelic-medium primary and secondary education and informal adult educational programs. Gaelic is also more visibly present today, found in rail stations and on first responder vehicles. In 2011, 57,000 people said they could speak Gaelic. The Gaelic-speaking population is predominantly located in Eilean Siar (Western Isles), where 52.3% of the population could speak Gaelic. However, recent social research has found changing attitudes towards Gaelic, with a greater proportion of the population using the occasional Gaelic word, noting a greater exposure to the language, and in favor of Gaelic as a school subject, and increased funding for the language. (Dean et al. 2022).

Scots is much more widely spoken. In 2011, 1.5 million people said they could speak Scots, and roughly 267,000 said they could understand Scots but could not read, write, or speak the language. (Scottish Government 2011). Languages spoken by Scotland's ethnic minority communities include Polish, Urdu, Punjabi languages and Chinese.

Scotland's educational system has long been distinct from that of the UK, as is the legal system and the Church of Scotland. And the preservation of these distinctive institutions has been a point of pride. The importance of Scottish education in the construction of a Scottish national identity rests firstly on the pace at which universal literacy was achieved and the development of tertiary education at an early stage. This contributes, Anderson argues, to a "democratic myth" of Scottish education, in which a "lad o' pairts", or a boy of modest social origins, could climb the social ladder through his access to education (Anderson 2018, 99). This mythologized meritocracy continues to inform Scottish educational policy, and the political dynamics surrounding this policy, today.

Education was a key focus of the newly formed parliament in 1999, with the Standards in Scottish Schools Act one of the early pieces of legislation passed. In 2002, the then-Scottish Executive convened a National Debate on education, from which a new curriculum emerged. This took the form of the Curriculum for Excellence, a 3-to-18 child-centric curriculum focused on a broad and balanced education, as well as skills such as critical thinking, problem-solving, and creativity. There was a remarkable consensus when the proposals were first made in 2004 and brought into force in 2010 (Paterson 2019). However, recent years have seen growing discontent about the state of education. Of particular interest is Scotland's Programme for International Student Assessment

(PISA) scores, which have gone from above the OECD average when first measured in 2000, with declines in subsequent years.<sup>4</sup>

Education has become an arena for political contestation in the devolutionary era, and performance on educational standards has been a political vulnerability of the government led by the SNP, despite not making radical changes to the educational system during its time in office (Arnott 2016; Arnott and Ozga 2016). The most notable changes have focused not on the curriculum, but in addressing broader inequalities which might affect educational attainment, including the expansion of early years childcare, and free school meals for pupils (Chambers et al. 2020; Dunlop 2016). However, declining literacy and numeracy scores amongst Scottish children as well as the failure to close the attainment gap have led to significant critiques of the government, and especially Nicola Sturgeon, who had pledged to make education the top priority for her administration. At the tertiary level, university tuition is free for students resident in Scotland. In one of the early acts of the parliament, tuition fees were abolished in 2000. This contrasts with England, Wales, and Northern Ireland, where fees have increased over time (Shattock and Horvath 2020; Masetti 2019). However, this too has become challenging, with economic conditions for universities leading to reduced intakes of Scottish students, in favor of fee-paying students from elsewhere. Scotland's party system is made up of two types of parties: sub-state parties and statewide parties. Sub-state parties compete in devolved elections and statewide elections, but only in Scottish constituencies. This includes the Scottish National Party, the Scottish Greens, and Alba (which has seen a handful of high-profile defections from the SNP, but has not, at the time of writing, succeeded in securing a seat in an electoral context). Statewide parties also operate in Scotland – but do so as distinctive Scottish parties – albeit with varying degrees of autonomy. This includes the Scottish Conservative & Unionist Party, the Scottish Labour Party, and the Scottish Liberal Democrats.

In the early years of devolution, Scottish politics was a two-horse race, between Scottish Labour and the Scottish National Party. Following the 1999 and 2003 elections, Labour formed a governing coalition with the Liberal Democrats. 2007 marked a sea change in Scottish politics, with the SNP returned as the largest party at Holyrood, and governing as a minority government. In 2011, the SNP achieved what was assumed to be impossible due to the electoral system, the return of a majority government. The SNP was returned to government in 2016 and 2021, latterly with the support of the Scottish Greens. The SNP's successive victories placed the issue of independence on the political agenda, and ensured it remained there.

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<sup>4</sup> See Grek et al. (2009) on the political and social response.

## Scotland's political history

<b>1707</b>	The Acts of Union are passed, merging the Kingdom of Scotland and the Kingdom of England to form the Kingdom of Great Britain.
<b>1934</b>	The SNP is formed.
<b>1967</b>	Winnie Ewing was elected to Westminster, marking the beginning of an increase in support for the SNP. Over subsequent elections, support for the SNP increased further, with the party gaining 11 seats in the October 1974 election.
<b>1972</b>	The UK enters the European Economic Community (EEC).
<b>1975</b>	The UK holds a referendum on EEC membership. While all four parts of the UK vote to remain within the EEC, Scotland and Northern Ireland do so by narrower margins than England and Wales.
<b>1979</b>	Votes on devolution in Scotland and Wales. A majority of voters voted in favor of Scottish devolution, but the vote failed to meet the necessary threshold imposed, and legislation for devolution was withdrawn. The SNP voted with the Conservatives in a vote of no confidence, triggering a new election. Margaret Thatcher became Prime Minister.
<b>1989</b>	The Scottish Claim of Right was published on 30 March, asserting the sovereignty of the Scottish people and their right to determine a government that best suited their needs.
<b>1997</b>	A new Labour government was elected at Westminster, with a promise to deliver devolution. Successful referendums on devolution in Scotland and Wales.
<b>1999</b>	The first Scottish Parliament is elected, and the parliament is reconvened.
<b>2007</b>	The SNP forms a minority government and undertakes a series of consultations on Scotland's constitutional future.
<b>2011</b>	The SNP forms a majority government, and pledges to hold a referendum on Scottish independence.
<b>2012</b>	The Edinburgh Agreement was signed by Alex Salmond, Scotland's First Minister, and Prime Minister David Cameron, transferring the necessary competences to the Scottish Parliament to hold a referendum.
<b>2014</b>	14 September, Scotland votes on the question "Should Scotland be an independent country?" 45% of voters support the proposition, while 55% decline.
<b>2016</b>	The UK votes on continued membership of the European Union. Leave wins with 52% of the vote, but majorities in Scotland and Northern Ireland vote to remain. In Scotland, this prompts calls for another referendum on independence.
<b>2022</b>	The UK Supreme Court rules that the devolved parliament does not have the necessary competences for a referendum on Scottish independence and would need the consent of Westminster to do so.

Scotland's economy is centered on services, particularly in the realm of finance, tourism, and the creative industries, and a range of traditional industries, including agriculture, forestry, fishing, food and drink. Renewable and traditional energy extraction and generation also contribute to the Scottish economy.

A distinction is drawn between on-shore gross domestic product (GDP), which excludes oil and gas extraction in Scottish waters, and off-shore GDP. For 2021, the on-shore GDP was calculated at 168.7 billion GBP, a return to 2019 levels (GDP fell sharply in 2020 as a result of the global pandemic). This was a total of 30,793 GBP per person. 2021 GDP which includes off-shore production was 181,000 billion GBP, or 33,033 GBP per person (Scottish Government 2023). GDP per head is higher than both Wales and Northern Ireland, but lower than that of England. Internal trade remains important, with 60% of Scotland's exports in 2019 going to the other nations of the United Kingdom.



There is significant political debate about the specificity of Scotland's economic performance, particularly vis-à-vis the rest of the United Kingdom and economic arguments centered heavily in the 2014 independence debate, with a particular focus on individuals' economic prospects with independence or within the UK (Elias 2019).

## 2. Autonomy and State Structure

Unlike in other sub-state entities, there has been longstanding agreement that Scotland is a nation. A nation without a state, which seems contrary to some realms of political thought, but a nation nonetheless (Keating 2020,1). It exists within the United Kingdom (the UK or the Union), which is a plurinational nation, although its largest constituent unit remains highly centralized.

The UK's constitutional structure is often heralded by constitutional scholars and politicians for its flexibility. In the absence of a single constitutional text, actors rely on political rather than legal answers to constitutional questions, and devolution can be understood as part of this transition. Lacking a codified constitution, the UK has been able to adapt to demands for devolution without a radical overhaul of the central state.

Traditional Unionist thinking would argue that national legislatures within a unitary state would naturally sit at odds with the principle of parliamentary sovereignty, which underpins the UK's constitutional settlement (Keating 2020, 11). However, devolution has not caused a fundamental rift in the Union, although it may have fostered a situation in which Scottish independence seems politically feasible in the near term. Robert Hazell describes the UK as "a union of four nations that works in practice, but not in theory" (Hazell 2006, 37).

Devolution, discussed in detail below, was one of the UK's most significant constitutional reforms, seeing the transfer of power to Scotland, Wales, and Northern Ireland.<sup>5</sup> However, it did not fundamentally change the structure of the United Kingdom as a state or alter the balance of power within it. "But for devolution", Aileen McHarg argues, "the UK remains a highly centralised state" (McHarg 2019). The constitutional settlement was designed around a principle of central autonomy, which allowed considerable "operational autonomy to peripheral governments and political organizations, so long as they do not challenge its [the central government] autonomy over matter of 'High Politics'" (Bulpitt 1983). The central state was largely uninterested in the implementation of domestic policy in the peripheral parts of the United Kingdom, focusing instead on high politics. The principle of parliamentary sovereignty (discussed in detail in section 4) remains unchanged by

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<sup>5</sup> Devolution to Northern Ireland long predated devolution to Scotland and Wales, but has had long periods of suspension and direct rule. Devolution was restored in Northern Ireland with the Belfast/Good Friday Agreement, which was contemporaneous to the devolution agreements. For details, see Utz (2022).

the devolution of powers to Scotland, Wales, and Northern Ireland, as the legislation underpinning devolution notes that while powers have been devolved, the power of Westminster to legislate was unaltered.

The devolution delivered in 1999 to Scotland, Wales, and Northern Ireland is, at its core, asymmetric. It reflects the support for devolution in the respective territories, which varied considerably, as well as the unique political circumstances in each nation/region. Devolution has been an evolving settlement in each of the three devolved nations, with further powers granted to the Scottish Parliament and the Welsh Assembly (*Senedd Cymru*), and periods of suspension and direct rule in Northern Ireland, given the instability of the political settlement there.

In Scotland, there was a strong consensus in favor of devolution, strengthening the political case for a parliament with extensive powers that surpassed those of the Scottish assembly proposed in the 1970s (Harvey 2020, 273). Support in Wales was more tepid and the devolution referendum of 1997 passed only narrowly. Welsh devolution took the form of executive devolution, which took on the functions formerly held by the secretary of state for Wales (Trench 2010). Welsh devolution has been iterative, with a number of Acts designed to increase the competences of the *Senedd* (Moon and Evans 2017; Cole and Stafford 2014). Northern Ireland, in contrast, had a much longer, but of course, much more turbulent history of self-government, with Stormont constituted in 1920, but suspended in 1972 with direct rule imposed. Despite various efforts to restore a devolved legislature in Northern Ireland, it was not until the Belfast / Good Friday Agreement of 1998 that the devolved institutions were restored.

**Table 2. Regional Authority Index scores**

Territory	Self-Rule	Shared Rule
Scotland	14	6.5
Wales	13	6.5
Northern Ireland	12	6.5

Note: Scores compiled from Hooghe et al (2021) update of the Regional Authority Index

As a result of these disparate processes, the powers differ between the devolved institutions. On the Regional Authority Index, which create numerical indicators of self-rule, including institutional depth, policy competences, fiscal and borrowing powers, and representation, and indicators of shared rule, including influence over the legislative process, the central executive, fiscal and borrowing control, and constitutional reform. All have significant self-rule, but relatively weak levels of shared rule, consistent with the British Political Tradition. Northern Ireland operates on excepted, reserved, and devolved powers model, in which reserved powers, when appropriate can be

transferred. As further powers have been transferred to Wales over time, the differences become less stark, and Welsh politicians have called for Wales to keep pace with Scotland.

**Table 3. Devolution compared**

Policy Area	Scotland	Wales	Northern Ireland
Agriculture, forestry and fisheries	✓	✓	✓
Constitution			
Consumer Protection			✓
Broadcasting			
Culture	✓	✓	✓
Defense			
Economic development	✓	✓	✓
Education and training	✓	✓	✓
Environment	✓	✓	✓
Foreign Policy			
Health and social care	✓	✓	✓
Housing	✓	✓	✓
Immigration			
Justice and policing	✓		✓
Local government	✓	✓	✓
Social security (partial)	✓		✓
Sports and arts	✓	✓	✓
Taxation (partial)	✓	✓	✓
Transport (internal)	✓	✓	✓

This asymmetry is further exacerbated by the absence of a form of English devolution. Efforts to deliver English devolution have largely failed. A referendum on devolution for the North East of England in 2004 was roundly rejected and there appears to be little desire for an English parliament. In 2014, a process of *English votes for English laws* (EVEL) was proposed, as an attempt to remedy what has become known as the *West Lothian Question*, named after West Lothian MP Tam Daylell, who raised the issue in the 1970s debates on devolution. This refers to the situation in which Scottish, Welsh, and Northern Irish MPs would be able to vote on issues which pertained for England alone (Bogdanor 2010). In Scotland, this includes issues such as health and education, both of which are wholly devolved. The unfortunately acronymed EVEL created a separate process for those bills certified as pertaining only to England, and subject to double majorities, of English MPs and the whole of the House of Commons. The procedure came into force in 2015 but was abolished in 2021 as the government argued it was overly complex and time consuming. (Gover and Kenny 2018; Evans 2022). An intermediate form of devolution consists of the introduction and expansion of competences of combined mayoral authorities and elected metropolitan mayors (Gains 2015).

### 3. Establishment and Implementation of Autonomy

The delivery of devolution in 1999 represented the most radical change in Scotland's governance since the Act of Union in 1707. It challenged traditional understandings of the United Kingdom (the UK or the Union) as a unitary state, with sovereignty wholly vested in Westminster (Keating 2020, 11). Despite the delivery of a significant degree of autonomy, the central state remained largely untouched, in keeping with the understanding of the UK as a unitary state. The original devolution legislation, drafted in the context of the United Kingdom's membership in the European Union (EU), has been tested in recent years as the UK has left the EU.

Scottish nationalism remained a relatively fringe interest in the first half of the 20th century. The Scottish National Party (SNP) emerged as a political party in 1934 but did not become electorally relevant until the 1960s. Its first hint of political success came at the 1967 Hamilton by-election, which saw the election of SNP politician Winnie Ewing. The party's support increased in the elections which followed, benefiting from the turbulence of British party politics at the time. The growing electoral support prompted the Conservative and Labour parties to consider how Scotland's interests might be accommodated within the UK. Over the course of the 1960s and early 1970s, the Labour and Conservative parties convened separate commissions on devolution to develop proposals for a Scottish assembly. The urgency of these efforts increased when, in October 1974, the SNP secured 11 seats in Scotland, asserting its influence on a minority Labour government.

In 1979, a referendum was held on the question of Scottish devolution. The proposals for an assembly would have seen the transfer of powers over aspects of health, education, and local government. However, a consensus on devolution had yet to emerge. Many within Labour questioned whether the minority Labour government had been too hasty, overreacting to an ephemeral electoral threat posed by the SNP. And within the nationalist camp, there were many who viewed the proposals for an assembly, with its limited competences, as a hindrance to the party's independence ambitions. Ultimately, however, the party opted to back the campaign, but did not campaign wholeheartedly for the measure.<sup>6</sup>

Faced with pressure from the Labour backbenches, an amendment was adopted that would require 40% of the registered electorate voted Yes, rather than just a majority of those who turned out to vote. While the devolution prospectus was supported, albeit by a narrow margin of 51.6% Yes to 48.4% No, turnout failed to meet the threshold requirement of 40% of the registered electorate. A referendum was also held in Wales on the same day, but received much lower support, with only 20% of those who voted supporting the establishment of a Welsh assembly. A lower level of support

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<sup>6</sup> For more on the first devolution referendum, see Perman (1980) and Thompson (1979).

for Welsh devolution than Scottish was to be a pattern through the early years of devolution (Goberman 2023).

As a result, the Labour government opted not to proceed with devolution legislation, and in 1979, the SNP voted with the Conservatives in a vote of no confidence in the minority Labour government. The SNP was punished in the subsequent election, seeing its ranks reduced from 11 to 2 MPs and entered a period of electoral stagnation and internal turmoil (Newell 1998)

The 1979 election saw a change in government. Margaret Thatcher, leader of the Conservatives, became prime minister. Thatcher's hostility towards devolution was well documented (Stewart 2009). She abandoned the Conservative commitment to devolution when she became leader in 1976 and campaigned against devolution in 1979, describing the Scottish assembly proposed by Labour as a "time-bomb under the unity of the United Kingdom" (Thatcher 1979).

The perception that Thatcher was not only hostile to Scottish devolution, but hostile to Scotland, grew amongst the electorate during the 1980s. And a consensus on devolution emerged amongst Labour and the Liberal Democrats. Labour and the Liberal Democrats concerned the *Campaign for a Scottish Assembly* (CSA). The SNP, beset with internal arguments, and feeling scarred by their participation in the 1979 campaign opted out, because the CSA would not consider independence as an option for Scotland. The campaign culminated in the *Claim of Right 1989*, which asserted "the sovereign right of the Scottish people to determine the form of government best suited to their needs". In 1995, the Scottish Constitutional Convention published *Scotland's Parliament, Scotland's Right*, setting out a blueprint for the devolved legislature.

In 1997, the Labour Party was elected on a pledge to deliver devolution in Scotland and Wales. By this point, there was broad consensus amongst Scotland's political parties, and the Scottish electorate, in the desirability of devolution.

The SNP had, over the course of the 1980s, re-examined its core policies and its strategies. In 1989, the party opted to campaign for *Independence in Europe*, dropping its opposition to EU membership, and became more open to devolution as a stepping stone to its ultimate goal of independence (Ichijo 2004). Labour, Liberal Democrats, and the Scottish National Party unified in a single campaign for devolution, with only the Scottish Conservatives campaigning against devolution, warning of the effect on Scotland's finances and relationship with the Union.<sup>7</sup>

Voters were asked to vote on two questions. Firstly, they were asked to endorse or reject the statement "I agree that there should be a Scottish Parliament" and if answering in the affirmative, they were asked to endorse or reject the statement "I agree that a Scottish Parliament should have tax-varying powers." The referendum saw a turnout of 60.4%, with 74.3% endorsing the first

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<sup>7</sup> For more on the campaign, see Mitchell et al. (1998); Bogdanor (2001); Denver (2002); Jones (1997) and Brown (1997).

question, and 63.5% of those voting Yes to the first also voting Yes to the second. A parallel referendum took place in Wales, with voters asked, “Do you agree that there should be a Welsh Assembly as proposed by the Government?”. Support for devolution was much narrower than in Scotland, with 50.3% voting in favor.

In July 1999, the first Scottish parliament was elected. Winnie Ewing, as *mother of the house*,<sup>8</sup> gave the opening speech. In doing so, she situated the new body in the context of the pre-Union parliament, saying: “The Scottish Parliament, adjourned on the 25th day of March in the year 1707, is hereby reconvened” (Ewing 1999) drawing a link between the pre-Union Scottish Parliament and the contemporary political institution.

For the first two elections (1999 and 2003), Labour was the largest party, forming a government in coalition with the smaller Liberal Democrats. In 2007, however, the SNP formed a minority government. During this period, they focused on “performance politics”, stressing their ability to operate as a competent government, rather than independence, the party’s *raison d’être* (Johns et al 2009; Harvey and Lynch 2012).

In 2011, the SNP received a majority, and in 2012, an agreement was signed between the UK and Scottish governments setting out the terms under which another referendum might be held. The signing of the *Edinburgh Agreement* marked the beginning of the campaign which culminated in a vote on 18 September 2014. The campaign took the form of cross-party groupings, *Yes Scotland*, which brought together the SNP and the Scottish Greens, and *Better Together*, which saw Labour, Conservatives, and Liberal Democrats unite to campaign for the Union.

The referendum rested on two assumptions which were recognized by both sides of the independence debate. Scotland, it was agreed, was a nation, and as a nation, had a right to decide its own political future. These assumptions led to a debate centered on knowledge claims – Scotland *could* be independent, no one was arguing otherwise, but *should* Scotland be independent? Central to the 2014 campaign were questions of Scotland’s economic prospects as well as its position within the European Union.<sup>9</sup>

As the polls narrowed in the weeks leading up to the 2014 vote, a vow was made by UK party leaders that if Scotland rejected independence, further devolution would be delivered through a cross-party commission.

On 18 September 2014, voters in Scotland opted to stay within the United Kingdom, with 55% voting No to the question “Should Scotland be an independent country?”. The margins, however, were

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<sup>8</sup> *Mother of the house* is the title given to the female MP with the longest continuous service.

<sup>9</sup> For more on the 2014 campaign, see Keating (2017) and McHarg et al. (2016).

narrower than might have been expected at the outset of the campaign, and a process to deliver further devolution was set in motion.

In autumn 2014, the Smith Commission convened, with proposals for extending the devolution settlement to include control over the size and composition of the legislature, substantial control over income tax, management of the Crown Estate as well as substantial social security benefits. The Commission also sought to acknowledge the permanency of the Scottish Parliament, fulfilling one of the commitments made in the *Vow* of September 2014 (McHarg 2016).

The failure to deliver independence did not spell the end of the SNP's reign. In the days and weeks following the vote, the party's membership increased dramatically to over 100,000 (Mitchell, Bennie and Johns 2017). In the 2015 UK general election, the SNP won 56 of 59 seats, leaving the state-wide parties with a single seat each (Thompson 2018). The party continued its success in the 2016 Holyrood election (Anderson 2016; Cairney 2016).

The UK's vote to leave the EU in June 2016, reignited Scotland's independence debate, and, at the time of writing, this debate is ongoing with no clear path to resolution.

## 4. Legal Basis of Autonomy

Devolution to Scotland was delivered through normal Westminster legislation, in the form of the Scotland Act 1998, and further legislation – i.e., Scotland Act 2012 and Scotland Act 2016 – has been passed to extend these competences.<sup>10</sup> This legislation sets out the reserved powers, as well as specific powers (such as some aspects of taxation and social security) which have been extended to Scotland.

In addition to being within the competences of a devolved parliament, legislation originating from Holyrood must comply with additional requirements. Legislation must not have extra-territorial effect or modify protected or entrenched statutes. It must also be consistent with European Convention of Human Rights, and prior to Brexit, it was required to conform to EU law.

### 4.1. Devolution and Parliamentary Sovereignty

The sovereignty of the Westminster parliament is central to our understanding of UK politics, most recently in the debates over membership of the European Union, in which politicians pledged to return control to parliament.

A.V. Dicey, the constitutional theorist, described parliamentary sovereignty as

an undoubted legal fact [...] Parliament can legally legislate on any topic whatever which, in the judgement of Parliament, is a fit subject for legislation. There is no power which, under

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<sup>10</sup> These Acts are available at <https://www.legislation.gov.uk/> (accessed October 31, 2023).

the English constitution, can come into rivalry with the legislative sovereignty of Parliament. No one of the limitations alleged to be imposed by law on the absolute authority of Parliament has any real existence, or receives any countenance, either from the statute-book or from the practice of the courts. (Dicey 1889, 65–66)

The traditional conception of parliamentary sovereignty suggests that power lies exclusively with the center. While devolution allows for policy variation and local autonomy, Westminster reigns supreme. Unlike in formal federations, devolved competences are not legally entrenched, and can be amended to reduce or expand autonomy, or overridden by UK legislation.<sup>11</sup>

This principle is epitomized<sup>13</sup> in Section 28(7) of the Scotland Act 1998, which states that “[t]his section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.”<sup>12</sup> While the Act also includes the so-called *Sewel Convention* (see below), which states that the Westminster will not normally legislate in devolved areas without the consent of the devolved institutions, it retains its ability to do so, an assertion underpinned by the presumption of parliamentary sovereignty.

However, the political implications of this are more nuanced, with the UK government demonstrating considerable respect for the devolved institutions, not least because impinging on devolved powers might fuel further support for constitutional change.

## 4.2. The Sewel Convention

The Sewel Convention, also known as the Sewel Motion, is a constitutional convention that governs the relationship between the UK parliament in Westminster and the devolved legislatures of Scotland, Wales, and Northern Ireland. It is named after Lord Sewel, who was the Minister of State for Scotland when the convention was initially established. The convention is based on the principle that Westminster will *not normally* legislate on matters within the legislative competence of the devolved legislatures without their consent. This means that the Westminster recognizes and respects the autonomy of the devolved institutions and will seek their agreement before passing laws that affect their areas of jurisdiction, through a legislative consent motion.

This is not, however, legally binding, and cannot be enforceable through legal challenge, due to the principle of parliamentary sovereignty outlined above. However, the political consensus has led Sewel to serve as a “*de facto* constraint on parliamentary sovereignty, protecting devolved autonomy, promoting co-operation in areas of overlapping competences, and ensuring consensual development of devolved authority” (McHarg 2023, 5–6; see also Evans 2020).

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<sup>11</sup> See McHarg (2021) for analyses of sovereignty in a UK context.

<sup>12</sup> This statement is found in the legislation underpinning Welsh and Northern Irish devolution as well.



The Sewel process works as follows: agreement is sought in instances in which UK legislation changes the law in a devolved area of competence or alters the legislative or executive competence of the devolved institutions. Under this convention, the UK government is expected to consult with devolved governments early in the process, and once the bill is introduced, the devolved governments publish Legislative Consent Memorandums (LCMs) and seek the consent of their respective legislatures. If this consent is not granted, it is up to the UK government whether to amend the bill or proceed in the absence of this consent. The process is broadly consensual, with a 2018 study finding that between 1999 and 2020, consent was denied for just 20 out of 400 LCMs (Paun et al. 2018). The consensual process is explained by early engagement of the UK government with the devolved governments, to identify and resolve any differences, or a clear need to deal with an issue on a UK wide basis, for example the Coronavirus Act 2020, which empowered ministers across the UK to implement policies to combat the pandemic.<sup>13</sup>

The Sewel Convention was placed on a statutory footing in the Scotland Act 2016 and the Wales Act 2017, which sought to *recognize* the mechanism, reassuring the devolved parliaments that they would input into legislation within their devolved competences (McHarg 2016). However, it is important to note that the convention is not legally binding and can be overridden by the UK if deemed necessary. In recent years, there have been debates and discussions about the strength and effectiveness of the Sewel Convention, particularly in relation to the passage of legislation regarding the UK's withdrawal from the EU. Consent was withheld by the Holyrood, the Northern Irish Assembly, and the Welsh *Senedd* on the European Union (Withdrawal Agreement) Bill, and by the Scottish Parliament and the *Senedd*, on the UK Internal Market Bill. Both pieces of legislation were passed over the objections of the devolved legislatures, despite intense negotiations (McEwen 2021). These discussions have brought attention to the evolving nature of the convention and the complexities of the UK's constitutional framework.

## 5. Autonomous Institutions

The autonomous institutions present in Scotland include the government, parliament, and the Scottish judiciary. The Scottish government and parliament were founded as part of the process of devolution in 1999. The Scottish legal system has a long history, having been preserved following the Act of Union in 1707.

Unlike in societies with ethnic divisions, there are no requirements for representation from specific groups in Scottish institutions (i.e., the First Minister and Deputy First Minister roles in Northern

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<sup>13</sup> For a detailed and accessible explainer, see the Institute for Government's Sewel documentation at <https://www.instituteforgovernment.org.uk/explainer/sewel-convention> (accessed October 31, 2023).

Ireland which ensures representation from nationalist and unionist communities), and there are no veto rights for specific groups and actors.

### 5.1. The Scottish Government

In the early years of devolution, *The Scottish Executive* was the title of the government of Scotland. In 2007, the Scottish Executive became the Scottish Parliament, an effort to emphasize Scotland's distinct political identity and its self-government ability, rather than as an administrative body beholden to the UK government.

The Scottish government is composed of the first minister, deputy first minister, ministers, and junior ministers. The first minister is the head of the Scottish government, elected by members of the Scottish Parliament (MSPs), with their appointment confirmed by the monarch. The first minister is responsible for leading the government, setting its policy direction, and representing Scotland domestically and internationally. Ministers, or cabinet secretaries, head up specific departments, the composition of which is decided by the government of the day. Cabinet secretaries are supported by civil servants.

In the years since devolution, a distinctive Scottish model of government has been identified by academics, chief amongst them Paul Cairney. He attributes the emergence of the model to Scotland's relatively small size, and dense network of public and third sector bodies, who work together closely (Cairney 2020, 465). This has accelerated since the entry of the Scottish National Party (SNP) into government in 2007, in which the party stressed both joined-up government and an outcomes-based approach. This has culminated in the *National Performance Framework*, which includes broad goals, and more specific targets, which are benchmarked and are publicly available on the Scottish government's website.

### 5.2. The Scottish Parliament

The Scottish parliament, known informally as Holyrood, is a unicameral legislature. It is comprised of 129 MSPs. It is a mixed-member system, with 73 constituency MSPs, elected through a first-past-the-post system and 56 regional MSPs elected off a regional system to ensure proportionality. Elections are held on a fixed schedule, every five years. Unlike Westminster, there is no formal designation of an official opposition party, all parties not in government have the same status.

Devolution was to represent an opportunity to deliver a new type of politics, a change from the more confrontational dynamic characterized at Westminster. Institutional architects aspired to "the development of a radically new legislative culture – one which championed consensualism over the 'yah-boo' adversarialism associated with the House of Commons" (Arter 2004,71). This is symbolized by the institutional structures, including processes to allow for public petitions and

*Members' Bills*.<sup>14</sup> It is also present in the physical design of Holyrood, where members sit together in a horseshoe shaped chamber rather than facing off against each other as in the House of Commons.

The parliament is made up of committees, which carry out the functions of both standing and select committees at the UK level. They engage in specific scrutiny of legislative proposals as well as provide general oversight of specific policy areas, through carrying out inquiries. Committees may also draft *Committee Bills*<sup>15</sup> for debate and vote by the full parliament. However, their primary function is on legislative scrutiny at all three stages of the legislative process (St Denny 2020, 486). The *presiding officer* oversees parliamentary proceedings, chairing debates, maintaining order, deciding points of order, and making rulings on procedural questions. Upon election, the presiding officer cedes their party affiliation, and is expected to be impartial and neutral in their role.

The Scottish Parliament has a significant degree of control over its own internal functioning, including its composition. The Scotland Act 2016 saw the extension of control over Scottish elections, which could be modified with the consent of two-thirds of all MSPs. These powers have been used to extend the franchise to include 16- and 17-year-olds in Holyrood and local elections (Eichhorn and Bergh 2021). These younger constituents were exceptionally given the right to vote in the 2014 independence referendum (Huebner and Eichhorn 2020). The franchise was also extended to foreign nationals legally resident in Scotland, including those with refugee status. This extension of the franchise applies only to elections taking place in Scotland rather than elections for UK-wide bodies.

The Scottish Parliament can debate any subject but can only pass legislation pertaining to its own competences. Limitations to the legislative competences of the parliament include restrictions on laws incompatible with the European Convention on Human Rights, modifications of the Acts of Union, or related to devolved powers. Before legislation is passed, it undergoes a process of scrutiny by the presiding officer, who assesses whether legislation falls within the legislative competence of the parliament. If there is a question of competence, the issue is referred to the *law officers*,<sup>16</sup> who determine whether they concur with the presiding officer's assessment (McCorkindale and Hiebert 2017). Bills can also be referred by the UK government and recent years have seen an increase in the number of bills referred (see below).

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<sup>14</sup> Members' Bills are introduced by MSPs who are not Scottish government ministers. Despite the ambitions of the Scottish Parliament's institutional architects, the majority of legislation continues to originate with the government.

<sup>15</sup> Committee Bills are proposed by a group of MSPs in a committee. For details regarding the types of bills, see <https://www.parliament.scot/bills-and-laws/about-bills/about-bills-and-laws/types-of-bill> (accessed October 31, 2023).

<sup>16</sup> The law officers for Scotland are the Lord Advocate (the principal legal adviser and chief public prosecutor) and the Solicitor General (the Lord Advocate's deputy). For details, see <https://www.parliament.scot/msps/ministers-and-law-officers/law-officers> (accessed October 31, 2023).

### 5.3. The Scottish Judiciary

Scotland's legal system pre-dates devolution, and the maintenance of Scotland's distinct legal system was provided for in the Act of Union of 1707 which brought Scotland and England into Union (White, Willock and MacQueen 2013). The key bodies include the High Court and the Court of Session.

The High Court is Scotland's criminal court, dealing with the most serious criminal cases, as well as appeals from lower courts. The Court of Session hears cases related to the actions of the Scottish Parliament and government. The Court of Session is the supreme civil court in Scotland. It is formed of an Outer House, which serves as the first level, and the Inner House, which is the appellate courts. In instances of conflict between the devolved and UK governments, cases are heard by the UK Supreme Court. Unlike in other countries, the Supreme Court is a relatively recent institution, established by the Constitutional Reform Act 2005, and coming into being in 2009 (Windlesham 2005). Its functions were previously carried out by the Appellate Committee of the House of Lords. The UK government has been more aggressive in recent years about referring legislation that appears outside the scope of the devolved competences, notably on the incorporation of the United Nations Convention on the Rights of the Child and the adoption of the European Charter of Local Self-Government. Both were challenged on the basis that they imposed obligations on the UK government. In 2023, the controversial Gender Recognition Reform (Scotland) Bill<sup>17</sup> has also been challenged by the UK government, despite cross-party consent at Holyrood.

## 6. Autonomous Powers

In principle, the devolved legislature has limited legislative powers. This contrasts with the "unlimited legislative authority" of Westminster (McHarg 2023, 2). However, in practice, the powers of the Scottish Parliament are fairly broad, and have expanded in recent years, to include elements of taxation, borrowing powers, and further legislative competences.

In Scotland, powers are allocated along a reserved model, according to those reserved powers listed in the Scotland Act 1998. The devolved powers have been expanded over time, with UK legislation passed to transfer further powers, notably over some aspects of welfare and taxation, as well as Scottish elections, which allowed the franchise in Scotland (for Scottish elections only) to be extended to 16- and 17-year olds, as well as those resident in Scotland but not citizens.

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<sup>17</sup> The Scottish government has requested a judicial review into the UK government's decision to block the enactment of its Gender Recognition Reform (Scotland) Bill. At the time of writing this article, the case was pending before the Outer House of the Court of Session. For details, see <https://www.instituteforgovernment.org.uk/explainer/section-35-scotland-gender-recognition-bill> (accessed October 31, 2023).

**Table 4. Reserved and devolved powers**

Reserved Powers		Devolved Powers
<ul style="list-style-type: none"> <li>• Defense and National Security</li> <li>• Foreign Policy</li> <li>• Immigration and Borders</li> <li>• Nuclear Energy</li> <li>• Social Security Benefits<sup>18</sup></li> <li>• Constitutional Matters</li> <li>• International Relations and Treaties</li> <li>• Broadcasting</li> <li>• Trade and Industry Regulation</li> <li>• Employment Law</li> </ul>		<ul style="list-style-type: none"> <li>• Health and Social Services</li> <li>• Education and Training</li> <li>• Housing</li> <li>• Environment and Agriculture</li> <li>• Transport</li> <li>• Culture, Arts, and Sport</li> <li>• Criminal Justice and Policing</li> <li>• Local Government</li> <li>• Economic Development and Tourism</li> <li>• Planning and Land Use</li> </ul>

Devolution, as Ron Davies argued, in reference to Wales, “is a process, not an event” (Davies 1999). And in Scotland, along with Wales, devolution has been extended over time as the institutions have matured and the political dynamics have changed. Devolution is underpinned by the Scotland Act 1998, which provided for the initial devolved institutions, and further transfers in the form of the Scotland Act 2012 and the Scotland Act 2016.

**Table 5. Legislation underpinning Scottish devolution**

Legislation	Content
Scotland Act 1998	It established the devolved Scottish Parliament and Scottish executive and set out the powers reserved to Westminster. All powers not explicitly noted as reserved were to be considered devolved.
Scotland Act 2012	It provided further devolution of powers, including the ability to set its own income tax rates. The impetus for the legislation came from the Calman Commission, or the Commission on Scottish Devolution, which was established in 2007 by the UK government to make recommendations regarding the further devolution of powers to the Scottish Parliament.
Scotland Act 2016	It granted additional powers to the Scottish Parliament, including control over social security benefits and some aspects of taxation. The legislation was agreed by the Smith Commission, a cross-party grouping formed following the 2014 referendum.

The Scotland Act 2016 emerged from the Smith Commission, convened following the 2014 vote, in fulfilment of the *Vow* made by UK party leaders. The Commission met to develop proposals which would secure “a durable but responsive constitutional settlement for the governance of Scotland” (Smith Commission 2014, 13). The Commission also acknowledged the “sovereign right of the people of Scotland to determine the form of government best suited to their needs” (ibid.). However, this was not legally entrenched, and efforts by Scottish MPs to amend the Bill to include a right to referendums were rejected in the House of Commons.

<sup>18</sup> It should be noted that some aspects relating to social security have been devolved to Scotland. For details, see <https://www.gov.scot/policies/social-security/> (accessed October 31, 2023).

The legislation provided for a greater control over the size and composition of the Scottish Parliament, its electoral system and franchise, substantial control over income tax, the Crown Estate, as well as some social security benefits. In addition to this transfer of competences, the original Scotland Act 1998 was amended to affirm the permanence of the system of devolution.

Coupled with the UK's departure from the European Union, the further devolution has led to what McHarg defines as boundary problems, in which more shared and overlapping competences exist, and a greater degree of cooperation is required (McHarg 2023, 6).

While international relations are a reserved competency, the Scottish Government has worked to extend its international networks through a process of paradiplomacy. Scotland has close networks in Brussels, as well as Scottish government offices in Beijing, Berlin, Brussels, Dublin, Ottawa, Paris, and Washington DC. The government has focused on promoting Scotland's businesses and educational institutions abroad and fostering investment and tourism. There is also an emphasis on international development, with targeted partnerships with key countries (Dellepiane and Reinsberg 2023).

## 7. Financial Arrangements

Scotland's financial arrangements, and subsequent spending decisions, are dependent on the size of the fiscal state (public expenditure and GDP ratio) and the degree of fiscal decentralization (the proportion of decentralized spending that is "locally financed") (Heald 2020, 516). Heald draws a distinction between the public finances of Scotland as a geographical entity and the public finances for which the Scottish Government is accountable to the Scottish parliament (ibid.).

The Scottish budget is made up of the Block Grant transfer from the UK level (calculated on the basis of the Barnett formula),<sup>19</sup> which is then adjusted to take into account the devolution of tax and social security powers. The size of the adjustment reflects the performance of UK tax revenues and social security expenditure. This is supplemented by devolved tax revenues.

The Block Grant calculates the change in public expenditure in England in devolved policy areas, and applies this, proportionally, to the devolved budgets. If public expenditure increases in England, the block grant increases proportionally. The calculation is made based on population, rather than need, which has led to concerns that Scotland benefits disproportionately from the calculation, resulting in higher public spending per capita. Adjustments are made on the basis of Scotland's devolved tax and social security powers.

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<sup>19</sup> For more details regarding the Barnett formula, see <https://www.instituteforgovernment.org.uk/article/explainer/barnett-formula> (accessed October 31, 2023).

In comparisons to other autonomous bodies, the Scottish Parliament's taxation powers are more limited, and include:

- Scottish income tax is partially devolved, with the ability to set the rates and bands on earnings, while the personal allowance, reliefs, and bands for savings and dividends are set at the UK level. Taxes continue to be collected by His Majesty's Revenue and Customs.
- Lands and buildings transaction tax and Scottish landfill tax are fully devolved, and collected and managed by Revenue Scotland.
- Council tax and non-domestic (business) rates are collected by local authorities.

An air departure duty will be introduced as well, provisioned as part of the Smith Commission process. Value-added tax (VAT) remains reserved, and the transfer of a proportion of VAT revenues remains under negotiation between the Scottish and UK governments. Recent years have seen increased UK government spending in the devolved territories, through *City Deals*<sup>20</sup> and *levelling-up* funding.<sup>21</sup>

## 8. Intergovernmental Relations

In contrast to many federal systems, intergovernmental relations (IGR) in the UK remains ad hoc, informal, and dominated by the center. The UK's processes of decentralization and the delivery of devolution were not accompanied by a parallel system for information sharing, coordination, joint decision-making, and dispute resolutions.

In the early years of devolution, IGR was relatively underexamined, with Labour in government in Edinburgh, Cardiff, and London, and preferring to manage disputes through intraparty processes rather than in formal, and public, forums (McEwen et al 2012). Efforts to institutionalize IGR increased when the Scottish National Party (SNP) took office in Edinburgh in 2007, with an uptick in plenary sessions of the Joint Ministerial Committee (JMC). But the UK's system of IGR was frequently regarded as "not fit for purpose" with parliamentary committees, think tanks, and academics agreeing on this point (McEwen et al 2020).

Relationships between levels of have at points deteriorated, as the competences and confidence of the devolved governments have grown, party incongruence has increased, and contentious constitutional issues of Brexit and independence have dominated the debate.

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<sup>20</sup> City Deals are packages of funding and decision-making powers negotiated between central government and local authorities. For details, see <https://commonslibrary.parliament.uk/research-briefings/sn07158/> (accessed October 31, 2023).

<sup>21</sup> Levelling-up funding aims to reduce geographic, economic, social and health inequalities in the UK. For details, see <https://publications.parliament.uk/pa/cm5803/cmselect/cmcomloc/744/report.html> (accessed October 31, 2023).

The JMC was introduced in the UK in 1999, established as a forum for cooperation and consultation between the UK government and devolved administrations in Scotland, Wales, and Northern Ireland on a multilateral basis. However, it was rarely convened in the early years of devolution, with politicians preferring less formal, often bilateral talks outside of the formal JMC structure. This reflects both the asymmetric nature of UK devolution, particularly in the early years, and a political preference for less formal mechanisms. The JMC (Europe) was the only forum which met regularly, ahead of European Council meetings.<sup>22</sup>

A Memorandum of Understanding was also agreed in March 2010, setting out a Protocol for avoidance and resolutions of disputes”, but the devolved governments have expressed concern that the UK government remains the arbiter in any disputes between the devolved governments and the center. More significant reforms were agreed in 2022, following the conclusion of the Dunlop Review.<sup>23</sup> This created a secretariat for IGR, interministerial groups, and a council of the prime minister and heads of devolved governments, to meet annually. While it is too soon to fully judge the success of these reforms, they seem to be a positive step forward in fostering more productive relationships between levels of government.

Shared rule is very limited in the UK context, and coordination between the Scottish and UK Governments has often been limited. Scotland is represented in the UK cabinet by the secretary of state for Scotland, an MP of the UK governing party from a Scottish constituency, but the secretary of state is often of limited influence and due to party incongruence, may not represent the views of the Scottish government.

## 9. Intergroup Relations within the Autonomous Entity

In contrast to Northern Ireland, where strong religious divides define political life, these divides are broadly absent in Scotland. Social research suggests that many people feel a strong sense of Scottish identity, but this is often articulated alongside a British identity. Most people, including some nationalist leaders, are very comfortable with these dual identities.

Where social divisions have occurred, they have been based on the constitutional questions facing Scotland – pertaining to the question of Scottish independence and remaining within the European Union. Research by Fraser McMillan and Jac Larner (2021) has suggested that the contemporary Scottish political community can be divided along these two political binaries – Yes and No, as

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<sup>22</sup> For more details regarding the JMC, see <https://www.instituteforgovernment.org.uk/article/explainer/devolution-joint-ministerial-committee> (accessed October 31, 2023).

<sup>23</sup> The Dunlop Review is an independent report into the UK government’s Union capability. For details, see <https://www.gov.uk/government/publications/the-dunlop-review-into-uk-government-union-capability> (accessed October 31, 2023).



defined by vote in the 2014 referendum and subsequent opinions on the constitutional question, and Leave and Remain, as defined by their 2016 Brexit referendum vote.

**Table 6. Scotland’s political binaries**

Voting	% of electorate
No to independence & Leave the EU	≈ 20
No to independence & Remain in the EU	≈ 37
Yes to independence & Leave the EU	≈ 14
Yes to independence & Remain in the EU	≈ 29

Data Source: McMillan and Larner 2021.

These binaries help us understand vote choice in subsequent elections. In 2019, Yes/Remain voted *en masse* for the SNP, while No/Remain were distributed more evenly across the three state-wide parties (Conservative, Labour and Liberal Democrats) and the Scottish National Party (SNP). Yes/Leave voters favored the SNP, but more than 20% voted Conservative. No/Leave voters favored the Conservatives.

## 10. Membership, “Quasi-citizenship” and Special Rights

There is no designation for Scottish citizens, and to date, Scottishness has been defined broadly based on residence. However, scholars argue that a distinctive forms of social citizenship as well as ideational citizenship has emerged in the devolutionary era (Arrighi 2020; Mycock 2012; Hepburn 2011). There are also different designations of types of citizens evident in the variable franchises between elections taking place in Scotland, and UK-wide elections.

Due to different policy choices between the devolved government and the center, we see an emergence of a different social citizenship regime. Heald describes this as an absence of interpersonal equity across the state, as each of the devolved governments, and the center, make different choices about the public services the state can and will provide (Heald 2020, 513). Most notably, this is seen in reference to health and social care, with residents in Scotland eligible for free prescriptions and free social care, and in university tuition fees, where students resident in Scotland do not pay fees, whilst those from outwith Scotland are liable for these fees.

Those born in Scotland, but currently residing outwith Scotland’s borders, do not have any special rights. There was a brief debate in 2014 about the possibility of Scots living elsewhere voting in the independence referendum, but this was quickly mooted. The Scottish diaspora, however, is

influential in shaping Scotland's place in the world, and fostering cultural, political and economic ties between Scotland and the Anglophone world (Leith 2014).

## 11. General Assessment and Outlook

The UK's 2016 vote to leave the European Union, and the protracted negotiations which followed the referendum, raised both the salience and the stakes of these questions. It fueled demands for a second referendum on independence in Scotland, which had voted by a significant majority to remain. It also exposed the weaknesses in the UK's uncodified constitution – calling into question the status of the devolution settlements and laying bare the inadequacies of the UK's system of intergovernmental relations, through which different levels of government coordinate. These questions are likely to be central to Scottish political life in the coming years.

The UK's vote to leave the European Union in June 2016 sent shockwaves through the UK political system. The vote, in which Scotland and Northern Ireland voted to remain, whilst England and Wales voted to leave, was met by the Scottish government, led by the Scottish National Party (SNP), by calls for another referendum on Scottish independence, owing to the “material change in circumstances” (Scottish National Party, 2016). These calls have been persistently rebuffed by a succession of Conservative UK prime ministers, and the path forward remains unclear.

As the UK officially left the European Union, the first cases of Covid-19 were emerging, with the pandemic resulting in significant economic, political, and social disruption. In the initial period, Scottish and UK leaders were keen to stress unity at a moment of crisis, but the responses were largely managed by each of the respective territories. During the pandemic, polling marked an increase in support for independence, perhaps a result of greater degrees of public confidence in Nicola Sturgeon's leadership. However, polls have since stabilized.<sup>24</sup>

In late 2022, the Supreme Court ruled that a referendum on independence was outwith the competences of the Scottish Parliament, asserting that the UK government's consent would be necessary for any future referendum. This ruling was not unexpected, but served as a blow to the nationalist movement, given the UK's refusal to countenance another referendum.

At the time of writing, the SNP, whose electoral success has shaped the Scottish political debate, appears in a moment of crisis. The party's long-time leader Nicola Sturgeon stepped down in February 2023, in a surprising move. This sparked a short, but contentious, leadership contest, which exposed fractures in the once disciplined and cohesive party. The party's subsequent financial and legal woes, which are unresolved at the time of writing, may have an impact on the SNP's

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<sup>24</sup> For up-to-date polling, please see *What Scotland Thinks Poll of Polls* at <https://www.whatscotlandthinks.org/opinion-polls/> (accessed October 31, 2023).

electoral prospects, and its ability to make a case for independence. Scottish Labour, relegated in third place in 2016, appears buoyant in the face of the SNP's troubles. The UK general election, set for some time in 2024, may serve as a bellwether of the SNP's political fortunes, and the prospect of Scottish independence, at least in the short-to-medium term.

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## List of abbreviations

CSA – Campaign for a Scottish Assembly  
 EEC – European Economic Community  
 EU – European Union  
 EVEL – English votes for English laws  
 GDP – Gross Domestic Product  
 IGR – Intergovernmental relations  
 JMC – Joint Ministerial Committee  
 LCM – Legislative Consent Memorandum  
 MP – Member of parliament  
 MSP – Member of the Scottish parliament  
 SNP – Scottish National Party  
 VAT – Value-added tax

## About the author

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