A (Not So) Common Framework – Asymmetrical Mixed Devolution and Environmental Governance After Brexit

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Introduction

“No national politician can any longer truly speak for the United Kingdom (UK)”

Tony Travers (2016)

This quote, taken from a London School of Economics report on the implications of Brexit for UK National Governance, hints at a truth that has been emerging since beginning of the UK’s devolution experiment and has exploded since the vote to leave the European Union (EU) on 23rd June. That there is no hegemonic articulation of the UK. That the four nations of the UK have divergent points was expressed clearly during the referendum which saw Scotland and Northern Ireland vote to remain in the EU and England and Wales vote to leave. Since that vote the UK Government has had to deal with one collapsed government in NI, and two which have diametrically opposed positions on Brexit from the UK position. The question guiding this paper is; Why have the nations of the UK failed to articulate a common position which balances out the interests and priorities of each? It concludes that the constitutional uncertainty brought about by Brexit, leading to this failure, is the result of the failure to construct a hegemonic conception of the UK state prior to the vote, and that Brexit has revealed this failure of articulation.

This paper offers an analysis of the intergovernmental relations of the UK, focussing on the UK, Scottish and Welsh Governments. Northern Ireland is absent from this analysis due to the collapse of the power-sharing agreement in January 2017 and the subsequent failure to form an executive since. Northern Ireland plays a very interesting role in this debate, however, as this is a discourse analysis of statements put forward by governments, inclusion of Northern Ireland was not possible.
Devolution in the UK

Throughout the 19th and 20th centuries successive UK Governments have been challenged by nationalist movements, largely limited to seeking “home rule”, now known as devolution (O’Neill, 2004). In Great Britain these movements grew more successful in the 1960s as the Scottish National Party won its first seats, beginning to challenge both the Labour and Conservative parties. The Labour Government of 1974 put the issue of devolution to the people of Scotland in a referendum, which they pro-devolution forces won, however, they did not reach the required quota of 40% of the electorate, thus stalling the devolution process of the UK for a quarter of a century. As the Labour Government was replaced by Margaret Thatcher’s Conservatives, a hideously unpopular party in Scotland, the democratic deficit of being ruled by a party the nation did not vote for, and the unresponsiveness of government to economic decline led to an increase in nationalist support, and support for devolution across the political spectrum. The New Labour Government of 1997 placed devolution at the centre of their constitutional reforms for the UK, however, this revealed opposing discourses of where power comes from. In the Labour 1997 manifesto Tony Blair wrote;

“I believe in Britain…the United Kingdom is a partnership enriched by distinct national identities and traditions. Scotland has its own systems of education, law and local government. Wales has its language and cultural traditions…A sovereign Westminster Parliament will devolve power to Scotland and Wales. The Union will be strengthened and the threat of separatism removed…The UK Parliament is and will remain sovereign in all matters” (Ibid)

In this speech Blair situated sovereignty firmly in the Westminster Parliament, and set this against the threat of independence. However, the Scottish Constitutional Convention which campaigned since 1989, and laid out the framework for
devolution wrote the Claim of Right for Scotland. This cross-party group, including
Scotland Labour MPs and the inaugural First Minister Donald Dewar, wrote;

“We, gathered as the Scottish Constitutional Convention, do hereby acknowledge
the sovereign right of the Scottish people to determine the form of Government best
suited to their needs, and do hereby declare and pledge that in all our actions and
deliberations their interests shall be paramount” (Torrance, 2018)

Thus, from the very beginning of the devolution process there have emerged stark
differences on what it means for the UK, and where power lies in a new UK.

Devolution Literature

The literature on devolution has grown exponentially since 1997 as is to be expected.
The main concerns of the literature on the devolution process itself have been the
institutions, funding, constitutional issues, and the intergovernmental relationships.
The focus on funding is largely due to the Barnett Formula which sees Scotland in
particular, but also Wales receive a greater degree of funding per capita than
England. O Neill (O’Neill, 2004) has argued that this goes someway to explaining the
reluctance in support for separatism, citing economic self-interest as a key to support
for the devolution system, and Scotland’s place in the UK. Prior to Brexit most
concerns regarding the constitutional implications of the UKs asymmetric
devolution system were concerned with the West Lothian Question, and the inequity
placed on England of being governed by the UK government (Kenny, 2015). Despite
counter-arguments that devolved budgets are derived from the English budget,
therefore all English legislation affects the entire UK, this has become the dominant
view in state institutions, reflected in the vote for English Votes for English
Laws(ibid).

The questions central to this paper, that of intergovernmental relations has evolved
into a vast literature. The first focus of the literature regarding intergovernmental
relations considered government political party congruence as an important element
of smooth relations. In the first years of devolution the UK, Wales and Scotland were all governed by the Labour party, or in Labour led coalitions. Scholars argued that this level of congruence allowed the system to work flexible built on interpersonal relationships rather than formal structures in the form of institutions (Cairney, 2012). Gallagher (2012) on the other hand argued that tension was more difficult to manage within political parties, drawing on the relationship between Welsh Assembly Members and Members of Parliament. Gallagher argued that this was a result of competition over recognition and power. Swenden and McEwan (2014) also highlight this relationship however, argue that this was a result of the anti-devolution views of Welsh Labour MPs on the Welsh Select Committee. The party congruence thesis rose in prominence with two notable elections, the election of the SNP as a minority government in 2007, and the Conservative Party as the lead in the Conservative-Liberal Democrat coalition in 2010 (Cairney, 2012).

O’Neil (2004) argued that while the devolution system seemed to be working, it would only be tested properly when the extremes were in power. In Scotland the extremes can be understood as those two parties who refused to take part in the Scottish Constitutional Convention, for diametrically opposite reasons. Cairney (2012) argued that the election of the SNP did not have a dramatic effect on IGR. One of the first moves of the SNP was to change the name from Scottish Executive to Scottish Government, which was symbolically important. However, Labour First Minister Henry McLeish attempted this “rebrand” but backed down in the face of opposition from the UK Government (O’Neill, 2004). Further, the Welsh Government did change its name in this period without backing down. Therefore, the development of an image of the devolved governments as more than administrative executives did develop across parties, and nations. What did change with the decrease in party congruence was an attempt to formalise relations between the governments as the SNP pushed for a reinstatement of regular Joint Ministerial Council (JMC) plenary meetings (Cairney, 2012). The JMC has three configurations,
the JMC (Plenary) between the leaders of each administration, JMC (Europe) which take place before each European Council meeting to discuss EU policy, and JMC (Domestic) which allows ministers from the administrations to discuss a range of issues (see figure 1 for frequency of meetings). There was also a development of opposition towards UK policy positions on reserved matters such as nuclear power, challenging the ability of the UK government to “stick up for Scotland” (ibid). However, as McEwan and Swenden (2014) state the lower level of party congruence did not radically alter relationships between the governments.

In his 2004 book Devolution and British Politics, O’Neill argued that the tenor of financial relations would put strain on future devolution arrangements. With a focus on the Barnett Formula as each nation tries to maximise its funding. However, with the introduction of austerity after the financial crisis Wyn Jones and Royles (2012) noted “a marked deterioration” in the relationship between the Welsh and UK Government over issues of finance and public spending cuts. Gallagher also noted that intergovernmental disputes are often about money, and that this is difficult to disentangle from party congruence, as different political ideologies responded to the crisis differently. The shared opposition to austerity by the Welsh and Scottish governments created a space for joint opposition to the UK Government in a way
that did not occur on other issues, as asymmetry ensures that devolved administrations cannot find common cause on many issues. (Swenden and McEwen, 2014)

The third focus of the literature on intergovernmental relations is that of the institutions and their flexibility. O’Neill (2004) opens his analysis stating that “asymmetrical architecture is difficult to manage in a polity used to singular and uniform governance” however, he argued that the weak institutionalisation of the UK system was a strength due to its flexibility. He argued that political friction in IGR would encourage creative solutions, and that the role of the JMC was not for policy making, it was only for the most serious of political impasses. What is outlined in the early days of devolution is a system which required “mutual goodwill”, and he argued “constant vigilance “by the central authorities”. This is view is central to much of the literature, that the devolution system would work as there were provisions put in place for “policing the boundaries of devolved competences to ensure that the territorial parliament does observe its proper limits”(O’Neill, 2004). Much of the concern was with the possibility of devolved governments pushing the settlement beyond its limits. The establishment of this architecture was not exactly what devolved nations wanted, for example, the JMC as an “arbiter with the power to overrule the UK government”. Gallagher (2012)argued that there were no real disputes between the governments, and that any intergovernmental processes that would have resulted in operational problems if they did not work, did work. The example he gives here is European business, with a much more rigid structure to the EU JMC. The Scottish Government was willing to “play by the rules” for the right to give input into the UK’s EU policy, even refusing to reveal any disagreements between the governments. In 2015, after the Scottish Independence referendum, the promise of more powers for the Scottish government raised the question of intergovernmental relations, and the possibility of a federal future for the UK. Tierney (2015) argued that the challenges to this proposal were
surrmountable, however, since then the Brexit vote has placed the governments completely at odds. O’Neill (2004) importantly notes; “those bent on provoking political crisis in intergovernmental relations will only be effectively marginalised, however, if there is a workable consensus both at the centre and within the territorial politics alike about making devolution work”. It is this consensus that this paper argues is lacking, and this lack was masked by membership of the European Union.

Devolution and the EU

When the devolution process began leaving the EU was not on the political agenda. This led to the adoption of what Mitchell terms the “retained powers model” in which all matters that were not retained by Westminster were devolved. This placed the EU as the highest level of a multi-level governance framework for many devolved powers (McHarg and Mitchell, 2017). For this reason the literature on the EU and devolution was focussed on the attempts of devolved governments to influence EU policy, rather than the influence of the EU in underpinning the devolved system (Tatham, 2011). This underpinning occurs in two ways which are now problematic. The first as stated above is that not all policy areas had fully delimited areas of responsibility, such as those that were Europeanised like agriculture. The second way as pointed out by Keating (Keating, 2018) is that the EU single market allowed for divergence in policy areas while underpinning the internal market of the UK. It is these two areas which will be subject to analysis in this paper, and that this paper argues constitutes a dislocation for the UK’s constitutional order.

This analysis will begin with an overview of the literature considering the post-Brexit intergovernmental politics of the UK. This will be followed by a critique of the literature which offers a rationalist view of the actions of each governing party, and fails to adequately explain the origins of the present crisis. In answer to this it will provide a reconceptualization of intergovernmental politics in the UK a discourse theoretical conceptualisation. It will then place the idea of Brexit as a dislocation as the centre of the explanation for the present crisis of the common frameworks.
Finally, after briefly outlining the methodology framework of discourse theory, it will provide an original analysis of the interaction between trade, agriculture and environment common frameworks to demonstrate this dislocation, and draw out some of the key logics.

Post-Brexit Intergovernmental Relations

The majority of academic literature on the topic of devolution was focussed on the difficulties of asymmetry and assumed that the introduction of devolution to Scotland and Wales would trigger an inevitable backlash amongst the English population (Kenny, 2014). Kenny (2015) presents this as one of the anomalies of a political system that adapted in a path-dependent manner, and a fundamental tension resulting from trying to sustain both a “unitary state” and a “union state”. It is this tension that is fundamental to analysis, and the production of an ideational understand of the government, and the sub-state governments. Kenny understands this when he presents Englishness as an empty signifier into which has managed to stand in for a variety of demands. This understanding has translated into the literature of post-Brexit analysis of intergovernmental politics in the UK have focused to some extent as three of the key authors have considered the role of subjectivity and inter-subjectivity in the relationships between the governments.

McEwan (2017) offers an institutional approach to consider the constitutional future of the UK post-Brexit with an analysis of the institutions of intergovernmental politics in the UK. Arguing that the institutions are shaped by the power dynamics within them McEwan focusses on the relationship between the Scottish Government and the UK Government. The power dynamics laid out in the Joint Ministerial Council which includes all four governments is more hierachal than is found in other intergovernmental systems. Central government is able to dictate the terms all meetings. This has led devolved administrations growing sceptical of the role JMCs play in resolving disputes between governments as the hierachal nature “stacks the deck”. The Scottish Government has challenged this nature as they see their “status
as a national government representing what they regard as distinctive national interests”. John Swinney, Deputy First Minister, appeal to “parity of esteem” and stated: “The UK Government and devolved administrations are equals in their areas of competence, and this should be recognised in the level of respect between them” (ibid). This draws on the notion that there are little shared areas of power between the two, and that in areas such as health and education the UK government acts as an English government. McEwan puts this down to a nationalist nation building project, invoking former DUP leader Peter Robinson; “To some extent, there are two devolved institutions, which recognise that they are devolved institutions, and one devolved institution that believes that it is a sovereign state and has the standing of the Government” (ibid). McEwan’s analysis while useful relies on a rationalist understanding of agency as the Scottish Government is “motivated by its desire to defend territorial interests” which acts as a “barrier to co-decision and compromise”. As discussed earlier this rationalist understanding is displayed throughout the literature when discussing the Labour period of devolution during which Scotland, Wales and the UK governments were held by the Labour Party. This continues in the literature as both McEwan and Keating (2018) have argued that due to ideological congruence intergovernmental relations was relatively frictionless in this period.

McHarg and Mitchell (2017) have raised the question of the Union State. Placed as one of the five basic tenets of the United Kingdom Constitution, there has been a lack of clarity over what that entails. It says little over the distribution of power, and given that parliament is ultimately sovereign, parliament could abolish each of the devolved states. Interestingly McHarg and Mitchell state that due to the political endorsement of devolution through referendum, and continuing public support the devolved institutions are in fact politically protected, if not constitutionally. Keating (2018) on the other hand argues that the centre and the periphery have differentiated understandings of the nature of the UK. He presents the United Kingdom Government sees itself as a unitary state “resting ultimately on the principle of
parliamentary sovereignty” (Ibid). Contrary to this, the periphery see the UK as a plurinational union consisting of England, Scotland, Wales and Northern Ireland who each have their own constitutional traditions and institutions. The consequence of this divergence, and the lack of English institutions, is the lack of a “centre” with the UK Government defined as the centre by default. He argues that politicians have not attempted to resolve these differences, nor find a common foundation for political authority.

The role of the European Union has of course been central to the post-Brexit vote literature, for example McEwan (2017) noted that the European Union has acted as the upper limit of policy differentiation for the UK as a whole. Going further, McHarg and Mitchell (2017) argued that EU law operates as a “key element in the policy-making process within a dispersed and multi-level system of government”. This again is taking the view that there is a “dispersed and multi-level system of government” for granted, yet it hints at the wider constitutional ramifications of the political contestation post-Brexit.

The literature offers some very crucial contributions however, what it lacks is a proper conceptualisation of the subjectivity of government, and the inter-subjectivity of government relations. Each contribution hints at this notion, in particular, Keatings, yet they fall short of conceptualising this relationship instead falling back on an essentialist notion of self-interest. This demonstrates a disconnect in the literature regarding how nations see themselves and how they behave, leaning closer to the ideational turn yet still with self-evident interests.

Discourse Theory and Devolution
Prior to articulating a discourse theoretical understanding of intergovernmental relations in the UK it is necessary to define what it is meant by discourse. As Howarth and Griggs argue, it “is grounded on a materialist conception of social relations, in which the sharp opposition between reality and symbolic representations is weakened” (Griggs and Howarth, 2017). It is as an articulatory
practice in which subjects link together words, rules, and resources, contingent elements, into relational systems. In the process of creating these linkages and relations the identities of the elements are modified in the process of articulation.

Finlayson (1998) in his discussion of nationalism offered an excellent starting point in an attempt to conceptualise the state in this way. Finlayson states that “Within the discourse of 'national identity' a certain 'common sense' is sedimented, that can be re-activated within political ideological discourse. With such a re-activation the meaning of national identity is partially transformed as it is articulated with specific ideological projects.” At the centre of these projects for Finlayson is the state, ideologies that espouse notions of freedom, solidarity and justice are articulated with the state as the backdrop, within a defined territory for a defined citizenry. His focus is on a “reasonably stable” nation-states where the real contestation is what the nation is like and who authentically represents its traditions. The relative stability of a nation-state can be usefully understood using Laclau’s concept of sedimentation; “Insofar as an act of institution [of the social] has been successful, "forgetting of the origins" tends to occur; the system of possible alternatives tends to vanish and the traces of the original contingency to fade. In this way, the instituted tends to assume the form of a mere objective presence. This is the moment of sedimentation” (Laclau, 1990, p. 35). At this most basic level, as a sedimented discourse the UK links together different ideals, systems, institutions, values and cultures, under the notion of Britishness. The discourse theoretical notion of discourse accepts that in every subject there are multiple identities each of which are historically contingent, Finlayson’s contribution is important here in pointing out that different political projects compete to authentically represent the nation, which offers a glimpse of how the states image of itself can change, depending on the dominant ideology.

However, the UK is not a stable, or sedimented discourse, which is unchallenged, as shown in the devolution literature. This notion of Britishness is not indivisible, solid or permanent. In fact it is the opposite, it is historically contingent, incomplete and
subject to challenge as are all discourses. As Laclau outlines with his notion of a dislocation “every identity is dislocated insofar as it depends on an outside which both denies that identity and provides its condition of possibility at the same time” (Laclau, 1990, p. 39). This lack and contingency requires social structuration through the development of hegemonic political projects which become sedimented, or institutionalised, which mask dislocation by creating inter-subjectivities. The institution of the United Kingdom as any nation is materialised as a set of social practices and “sutured” through national myths that structure these practices. It should be clear that this notion of dislocation is applicable to the UK as outlined by Keating (2018) in that there has been a failure to articulate a “common foundation”, or hegemonic project.

Brexit as dislocation

As argued previously the role of the EU is deeply embedded in the UKs devolution system, many of the devolved policy areas are the most Europeanised, such as the environment, they are overwhelmingly legislated at the EU level, and implemented at the devolved, or local level. Radelli has suggested that Europeanisation “consists of processes of construction, diffusion and institutionalisation of ‘formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies’ (Radaelli, 2004). However, decision of what policy proposals are legislated at the European Union level is clearly laid out with the principle of subsidiarity which is enshrined within the EU’s treaties. It states; “the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level” (European Parliament, no date).
This leaves room for contestation, however, there is general agreement at what level is appropriate for different policies.

This hegemonic view of the multi-level policy process was built into the UK’s devolution settlement, alongside a wider Europe of the regions notion which favoured smaller nations such as Scotland and Wales view of power. The Brexit process has "opened up the possibility of a differentiated de-Europeanisation and divergence across ...the UK" due to the nature of the devolved system. As introduced earlier the notion of dislocation is important here. While every identity is lacking, social relations are radically structured by a hegemonic discourse. Glynos and Howarth (2007, p. 110) have referred to dislocatory experiences as “a moment when the subjects mode of being is experienced as disrupted. In this sense, then, we could say that dislocations are those occasions when a subject is called upon to confront the contingency of social relations more directly that at other times.” A dislocatory experience does not necessarily entail a transformation of hegemonic discourses but instead offers the possibility of challenge as the hegemonic discourse is no longer effective in representing reality.

This analysis of Brexit as a dislocatory moment for UK Intergovernmental Relations has consequences for the development of the necessary governance architecture post-Brexit. The next section of this paper will argue that this failure of articulation has limited the government’s ability to negotiate the development of common frameworks as there are fundamental disagreements over where power lies. The Scottish and Welsh governments have pushed for a closer relationship to the European Union than the UK has been willing to consider, and have sought to continue, at least, the current level of divergence in policy areas such as agriculture and the environment. On the other hand the UK government have sought to allow divergence, where it does not restrict their ability to agree new international trade deals. International trade, agriculture and environmental policy all overlap and the UK governments’ dual role in these areas has had an extreme effect on IGR in the
UK, and the development of Common Frameworks. As an empirical case study the current discussion around these three issues can demonstrate this dislocation, and provide further insight into how discourse theory may be used to analyse the development of devolution in the UK.

Methodology
In order to carry out an analysis of the discursive construction of meaning Howarth and Glynos (2007) have developed a logics approach with three conceptual tools. The first are those logics which represent the sedimented values and dominant norms, social logics. As Howarth and Griggs (Griggs and Howarth, 2013) note administrative systems, or networks of governance are in our terms sedimented systems of discourse. The second set of logics are political logics, these are the way a social practice or regime is being contested, or was instituted. By identifying and analysing political logics it is possible to identify social logics as it is through the process of contestation that emerging practices are instituted and become sedimented. Political logics can be further abstracted into two logics, that of equivalence and difference. The logic of equivalence is the linkage between different political requests into an incomplete demand which challenges the sedimented practices. A logic of difference is the breaking down of the logic of equivalence as the dominant regime attempts to meet individual requests without transformation. Lastly, there are fantasmatic logics, these are the stories that ‘grip’ subjects of a discourse, “structuring their desires, providing them with forms of identification and promising the enjoyment of a ‘fullness-to-come’.” These can be broken down into two, that of the beatific fantasy of success and the horrific fantasy of victimisation. Beatific logics are those that promise fullness and utopia, i.e positive outcomes. In contrast, horrific logics warn of apocalypse and collapse, i.e. negative outcomes (Glynos and Howarth, 2007). These are the tools that have been utilised to analyse the intergovernmental relations after the Brexit vote in order to
conceptualise how the each party is attempting to construct a new hegemonic view of the UK's constitutional order.

In practice this process has required repeated readings of texts collected, in particular those released by each government after the Brexit vote which have attempted to construct a dominant discourse of intergovernmental relations. An initial focus here is on identifying the way different problematisations of Brexit from both the periphery and the centre, in other words this is how “structured the terrain of argumentation, along with the construction of demands and how these were articulated together (or not) through the logics of equivalence and difference” (Griggs and Howarth, 2013). Following Howarth and Griggs I have then used Foucault’s criteria for identifying a statement to “isolate and describe the core statements that emerge or disappear in different contexts, while also charting their repetition and transformation in the analysis of the contestation of common frameworks. Thus enabling me to “discern, construct and chart the competing policy discourses that have structured the shifting terrains of argumentation” in the UK's devolution system.

Trade, Agriculture and the Environment
With the UK’s membership of the EU, the EU created the conditions under which the single market of the UK operated, developed agriculture policy and much environmental policy. The latter two were then implemented at devolved level, with very little UK-wide input, these were very much Europeanised policy areas. The importance of the EU underpinning the single market was that in these areas of agriculture and the environment they allowed for a high degree of divergence between the nations of the UK. With Brexit agriculture and environmental policy will be returning from Brussels, yet there are disagreements over where these powers will return, as they were not specifically reserved. There has been growing concern that the single market of the UK must be protected without new tariff barriers, yet the devolved nations have argued for at least the current level of
divergence. This paper will argue that these disagreements are a result of this dislocation, of removing the EU from the view of the devolved UK, and a failure to re-articulate a hegemonic view of the UK may result in a stagnation of these policy areas, a constitutional crisis in the shape of the UK asserting itself above the devolved governments, or a transformation of the UK’s constitution.

The Common Frameworks
The issue of common frameworks in a post-Brexit Britain is negotiated, and recognised as necessary by all governments. However, the process of extrapolating where common frameworks would be necessary is scattered, and the logic of decisions is not always clear. For example, there is no plan for a common framework to co-ordinate water quality, which may be a sign that they are happy with the current co-operative arrangements, or that policy divergence is not seen as a risk to the fundamentals principles guiding the common framework discussions (United Kingdom Government, 2019). This analysis will focus on the most controversial principle guiding the common frameworks analysis.

The governments have agreed that common frameworks will need to be negotiated in order to do the following;

• enable the functioning of the UK internal market, while acknowledging policy divergence;

The concept of the internal market is one that has dominated in the UK Government’s view of its role post-Brexit as the one responsible for ensuring an “efficient and prosperous internal market”. This can be seen again as Theresa May outlined the UK Government’s negotiated strategy;

“Our guiding principle must be to ensure that – as we leave the European Union – no new barriers to living and doing business within our own Union are created, that means maintaining the necessary common standards and frameworks for our own domestic market, empowering the UK as an open, trading nation to strike the best
trade deals around the world, and protecting the common resources of our islands.” (Theresa May, 2017)

However, for the Scottish Government this is not as simple a formulation. They have expressed concern that while that the “UK internal market” has no agreed legal definition and suggest that it may be “deployed to adjust devolved competence without the consent of the Scottish Parliament” (Russell, 2019). The UK Government have since used the concept of the internal market in opposition to Scottish plans such as the Continuity Bill, however, the placement of the UK Government as the ultimate arbitrator of an undefined empty signifier such as the internal market is an attempt at re-imposing a hierarchal relationship between governments. Further, the Scottish government argues that devolution case law has allowed for devolved divergence with a market impact such as the smoking ban, and these powers are properly held by the devolved administrations (ibid). Disputing this the UK asserts itself as the replacement for the supranational EU;

“The UK Government is responsible for ensuring that the internal market within the UK operates freely and openly … The powers currently held by the EU that provide that guarantee on the internal market are not, and never have been, within the competence of the devolved administrations” (United Kingdom Government, 2017).

This is also contested in Wales as Mark Drakeford, Cabinet Secretary for Finance, argued that: “language around devolving “significant brand new powers” is misleading and unhelpful. These powers are not being handed to the National Assembly, they are already here. (Senedd Research, 2018)”

The Logic of the Whole of the UK

The central logic to this analysis, and one that positions the government in this way can be illustrated through a key phrase repeated throughout intergovernmental negotiations, “we are committed to securing a deal that works for the whole of the UK, Scotland, Wales, Northern Ireland and all parts of England”(United Kingdom
Government, 2017). This logic of the UK as a whole is repeated in a range of circumstances, when considering the different outcomes from the referendum, the possibility of a differentiated relationship to the EU, and when considering internal negotiations for the distribution of power.

With this discourse the UK Government replaces the EU as the arbitrator of the common market, or the “internal common market” (Select Committee on the European Union, 2017). By linking the devolution of powers to trade barriers and implying a causality between this and “economic and growth and prosperity”, the UK Government have a chain of equivalence with the notion of a “prosperous and effective internal market” acting as an empty signifier into which these demands, and the UK Government as the top of the chain, with the power to act on behalf of the “whole of the UK” (ibid). In a logic of difference the UK Government have attempted to differentiate between the devolved nations focussing on the common sense of “bilateral negotiations” as “of course differences in terms of competence and interest between the other devolved administrations” means they must be heard individually, despite having similar Brexit policies (United Kingdom Government, 2017).

The Welsh and Scottish Governments have presented intergovernmental relations and common frameworks as a non-hierarchical negotiation amongst equals within devolved competencies. While the UK Government has attempted to establish a hierarchal order utilising the logic of the “internal UK market”, and the UK Government as the government for the UK as a whole.

Agriculture

The interactions between governments in relation to agriculture policy have largely been objections from devolved governments to UK plans for Common Frameworks, and have sought to alter the nature of intergovernmental relations. This analysis will
offer an insight into three logics, one shared by Wales and Scotland, and two distinct.

UK Government as Hierarchy and Equality

This logic sees the asymmetric nature of devolution as a threat to Welsh power, and attempts to place the Welsh and UK Government on an even footing. The Welsh government argued that the powers of Welsh Ministers should mirror those that the UK Government has for England, placing them on an even footing (Welsh Government, 2017). Further this even footing is advanced in the view of the establishment of common frameworks based on co-ordination and agreement rather than imposition.

The chain of equivalence in the Scottish case has an extra demand, that of remaining within the EU, or the softest possible Brexit (Scottish Government, 2016). As Scotland voted to remain in the EU during the referendum this notion of difference, and the lack of mandate for a single UK position is a fundamental demand from the Scottish Government. They argue that it is impossible for the Scottish government to support UK Agriculture Bill as it involves providing consent for “EU exited related provisions” (Scottish Government, 2018). They also refer to the Scottish Government document “Scotland’s place in Europe” which places Scotland in opposition to a common UK position held by the UK Government, and of a level with the UK Government (Scottish Government, 2016). This discourse is found in the literature with the contribution of McEwen (2017), however, rather than a result of the rational self-interest of a nation building project, this paper would argue that it is driven by the discourses the Scottish Government articulate, and how they view themselves.

The Logic of “Made in Wales”

Focussing here on agriculture policy the Welsh Government quickly establish the view that it is already devolved to Wales, and this should “continue” to remain the case. In favour of this they argue that it would allow each administration to suit its
own unique circumstances, and develop a system which works for “Welsh agriculture, rural industries and communities” (Welsh Government, 2018). This demand is tied to the need for the Welsh Assembly to bring forward a Welsh Agriculture Bill to underpin a “Made in Wales” system, rather than something that could be achieved within a UK bill. It is therefore not just necessary that the system reflects each nation, but originates from each area. The Welsh Government also produced a document which has sought to change the nature of the UK devolution system, titled, Brexit and Devolution (Welsh Government, 2017). In this document the Welsh Government outlines an alternative to the hierarchal nature of intergovernmental relations, utilising fantasmatic logics claiming that current relations are a “threat to the union” and devolution which must be “respected”. They also tap into the logic of “taking back control” by demanding that the UK Government “respect the spirit of Brexit”, the Welsh people do not want to replace the EU with the UK.

Continuity for Scotland

On top of the specific demand of remaining within the EU Scottish demands are structured along the lines of continuity. For example, arguing that devolved administrations do not require the powers conferred from the UK Agriculture Bill as retained EU law and the devolution settlement allow for it to “continue on as normal” (Scottish Government, 2018). As the time comes for more powers they insist that the Scottish Parliament can legislate to increase the powers of ministers for altering the support, as it is a “devolved policy area”. Again this is argued to allow for “full freedom to design policy to meet our specific needs, in line with devolution”, and to “continue as normal” as the policy area is already devolved. Further they frame the UK Agriculture Bill as restricting the ability of Scottish Ministers’ to exercise devolved functions.

These two political logics seek to establish the competency of the governments in these key areas, arguing it is merely a continuity with the “devolution settlement”,

(Welsh Government, 2018).
therefore appealing to a social logic. These demands are linked in a chain of equivalence to the democratic accountability of the nation from the nations people. These logics embrace a horrific fantasmatic logic as any changes to the devolution system would be a democratic outrage, and threaten the union. This is in direct contrast to the UK discourse of Westminster parliamentary sovereignty, and challenges the dual role of the UK Government as an arbiter for the internal market, and government of England in this area.

The Environment

In the past year each of the nations put forward a consultation on their post-Brexit Environmental policies. These consultation documents recognise the environment as a devolved area, and therefore their geographic scope reflects this, however, an analysis of the references to the other UK governments around these documents is enlightening.

Throughout the UK Government’s consultation it is stressed that the geographic scope is restricted to England, other than those areas which are reserved, which covers the UK as a whole. Northern Ireland has been included as a possibility to expand if there is no NI Executive in place. However, it is stressed that the UK Government are open to co-designing a common framework for the UK as a whole with the devolved governments. The UK Government stresses their case for joint working by arguing that the environment inherently cuts across boundaries, and argue that Brexit is an opportunity to strengthen environmental protections (Department for Environment, 2018).

In the Scottish Government consultation there are very little references to the UK, indeed the UK is used as a precursor to any discussion of change after Brexit. The background information provided offers an example of this “Scotland did not vote for the UK to leave the EU, but the Scottish Government must play its part in dealing with the consequences” (Scottish Government, 2019). Again, this is re-iterating and
establishing difference between Scotland and the rest of the UK, in particular the position of the UK Government. Secondly, as with the earlier analysis Scotland emphasises continuity, a “a commitment to maintaining Scotland’s distinctive approach to environmental protection” (ibid). Through re-emphasis of continuity and difference the Scottish government insists its own approach as protecting Scotland’s Place in Europe is seen throughout. The other context in which the UK is mentioned is on the subject of monitoring and reporting, this is in the language of collaboration rather than hierarchal nature of reporting to the EU as before.

The Welsh Government focussed on the relationship with the UK Government in great detail. This discussion was framed in a different way to the UK’s approach as it set Wales as an environmental leader in the UK with particular emphasis on the differentiated governance gap expected post-Brexit;

“Any UK-wide proposals to address environmental governance gaps must, therefore, not only respect the devolution settlement, but also be compatible with our existing Welsh legislative framework. As the environment is a devolved matter on which the Assembly has already passed ground-breaking legislation, we start from very a different position to the one the UK Government faces with respect to its responsibilities for England“ (Welsh Government, 2019)

This demonstrates that the Welsh government have an embedded view of themselves as environmental leaders in the UK, and in particular the role of the UK Government in England. Further, the Welsh Government argue that the UK Government has not provided clarity on “what it believes will or will not constitute a reserved matter in terms of the environment”, therefore there is still contestation of which powers will lie where, with the Welsh Government fully embracing the view that the environment is devolved (ibid). This evidence that they are so embedded in how they see themselves, and their role in the UK and the result is likely to be either a fractured approach across the UK, or an imposed and challenged one from the UK government.
Agriculture, the Environment and the Internal Market

McHarg (2019) noted that if an agreed definition of the internal market was not negotiated, by default it would be decided by the UK Government, or as Dougan (2019) alternatively suggested, by the courts. In appearing in a roundtable to discuss the internal market Keating (2019) argued that agriculture and the environment are the important issues. Gravey (2019) argued that due to the lack of clarity on the distribution of powers in the past regarding agriculture there was far more litigation between Wales and the UK, than Scotland and the UK. As demonstrated above, each government has a different conception of what the UK is, and therefore who should necessarily arbitrate. It is this question of the internal markets, and possible divergence which can be challenged in the courts and either restrict or empower devolved administrations, that will lead to constitutional change in the UK, without the development of an agreed constitutional settlement, or the imposition of one from the UK Government. The above analysis of the discourses surrounding agriculture and the environment reveal a startling differentiation. Agriculture has been at the centre of the common frameworks discussion with the need to maintain divergence, while also avoiding new barriers to trade. On the other hand on the environment the internal market is marked by its absence. As both Dougan (2019) and Gravey (2019) raised, it is possible that if one area of the UK had higher environmental standards this may act as either a trade barrier for those trading in, or as a risk for the businesses in that nation, and may be subject to challenge in the courts. The failure to act on these possibilities, demonstrates a clear divergence on the view of the UK from each devolved nation, rather than a lack of self-interest.

Conclusion

Therefore, this paper has attempted to demonstrate two crucial points for the study of the politics of common frameworks post-Brexit. The first of these points is that a discourse theoretical perspective can help us understand both the failure of current UK intergovernmental relations as the result of a dislocatory moment, and also the
differential discourses and logics of each of the constituent nations. Brexit is a dislocation in a number of respects. Overall there has been a failure to articulate the United Kingdom’s position in the world, secondly it has exacerbated an already fractious system of government in forcing a decision on the hegemonic view of the United Kingdom by removing the generally accepted position of the EU. The second achievement of this paper is to demonstrate this lack of hegemony by analysing the interaction of the internal market, environment and agriculture. These differentiated logics behind each governments action are shaping the future of environmental governance, and any establishment of a stable system of governance will necessarily be preceded by the articulation of a hegemonic discourse. This discourse may be the hierarchal one posited by the UK Government or the collaboration of equals advanced by the Welsh and Scottish governments, however, the former flexibility of allowed by membership of the EU is no longer constructive, and constitutional change is necessary.


