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A Federal Future for the UK: the Options

Dr Andrew Blick and
Professor George Jones

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A Definition of Federalism

Federalism is defined as 'a system of government in which central and regional authorities are linked in an interdependent political relationship, in which powers and functions are distributed to achieve a substantial degree of autonomy and integrity in the regional units. In theory, a federal system seeks to maintain a balance such that neither level of government becomes sufficiently dominant to dictate the decision of the other, unlike in a unitary system, in which the central authorities hold primacy to the extent even of redesigning or abolishing regional and local units of government at will'.

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Note on the Authors

Dr Andrew Blick is the author of various works including 'People Who Live in the Dark: the history of the special adviser in British politics' (London: Politico's, 2004); 'How to go to war: a handbook for democratic leaders' (London: Politico's, 2005); and, with George Jones, is joint author of 'Premiership: the development, nature and power of the office of the British Prime Minister' (Exeter: Imprint Academic, 2010). Since 2008 he has been attached to the Federal Trust 'Federal UK' project.

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A federal future for the UK: the Options

Introduction by Brendan Donnelly, Director, Federal Trust for Education and Research

This is the third pamphlet in a series which uses federalism as an analytical framework to discuss the developing constitutional structure of the UK. The first two pamphlets focussed in particular on the impact of devolution as introduced by the Labour governments of 1997-2010. *A federal Scotland in a federal UK* argued that the federal approach to the internal governance of the United Kingdom (UK) potentially provides a political context more satisfactory than the existing devolution model for the enhancement of Scottish autonomy. *Devolution and regional administration: a federal UK in embryo* argued that since 1997, the UK constitution has developed certain significant new features that might be seen as resembling those characteristic of a federal settlement. At the same time, the report argued, the UK cannot yet be regarded as a fully federal constitutional system, or inevitably progressing towards such a destination.

An important theme emerging in both these works was that of tensions in the existing system. A number of these strains are associated with the 'asymmetrical' nature of the UK constitutional settlement, a longstanding characteristic that has become more pronounced since devolution; and with the related multinational character of the UK. The tensions within the UK settlement include demands for the extension of existing devolution arrangements and the existence of secessionist movements, particularly in Scotland. Within England, where there has been no devolution outside Greater London, there is some resentment about the supposed political and financial unfairness of devolution, focusing on the so-called 'West Lothian Question' and the Barnett formula for the redistribution of funds within the UK. Finally the programme for the introduction of devolution to the English regions outside Greater London has stalled at an undemocratic, centralised stage of its development.

Since the first two pamphlets appeared, a new Coalition government has taken office. Both parties in this coalition, the Liberal Democrats and the Conservatives, had proposals in their respective manifestos that addressed issues relevant to the idea of a federal UK. The single policy

statement of their coalition government is also significant in this context. In particular the government has agreed to establish a commission to consider the 'West Lothian question'; to implement the Calman Commission proposals; to retain the commitment under the Labour government to hold 'a referendum on further Welsh devolution'; and to introduce directly elected mayors for the twelve largest English cities, subject to referendums. More broadly 'The parties will promote the radical devolution of power and greater financial autonomy to local government and community groups'.

In this third pamphlet in the series, the authors seek to move the debate forward, asking what possibilities exist in the UK for more coherently or radically federal structures, against a background of possible developments in the new political environment. In particular there is a focus on the problems attendant upon England having been "left behind" within the UK by devolution. Devolution has led Scotland, Wales and Northern Ireland increasingly to resemble components in a possible federal UK; but the English regional agenda has become mired, and new approaches to England must be considered. The authors consider whether there are means or ways in which different regional models could be applied to England, including through the prism of the 'city region' concept; whether the inclusion of England as a single unit within the UK would be workable; or whether local government offers the potential for progress. Finally, they discuss how the particular components that are devised for a federal UK might be integrated into a central constitution, and what form it might take.

Part one: federal options for England, by Dr. Andrew Blick

1. The merits of an 'England of Regions'

Originally many proponents of devolution envisaged that, alongside devolution to Scotland, Wales, Northern Ireland and Greater London, there would be established directly elected assemblies in the remaining eight English regions. This outcome, if it had been achieved, would have been a major step in a federal direction for the UK, with the entire population being represented by a tier of governance equivalent to a state within a federal constitution. Moreover it would have addressed problems associated with the asymmetry of national populations within the UK, with no one block dwarfing the others.

However, long before Labour lost office at the General Election of May 2010, its agenda for devolution to the English regions - which it had only ever pursued half-heartedly anyway - had lost such impetus as it possessed. The most serious setback came in November 2004 when a referendum on the establishment of a directly elected regional assembly held in the North East – believed to be the region most well disposed towards the idea – produced a 78 per cent 'no' vote. Devolution using the existing English regions outside Greater London was therefore already off the agenda even before the Coalition government took office, primarily as a consequence of lack of enthusiasm amongst the English electorate. But the possibility of devolution within England using a different regional model remains worthy of consideration.

The route of English regions of some kind forming components in a federal UK has various attractions. It would ensure that no one unit within the UK was so much larger than the others as to have a potentially destabilising impact – a problem that might arise were England included as a single component in a federal UK (as is discussed below). To avoid this danger, it would not be necessary to use as many as nine English regions, as exist at present for administrative purposes (and as constituencies for European Parliament elections), but simply to ensure that no one English region was preponderant within the UK. It might also be preferable not to create English regions amongst which two could, if in alliance, be numerically dominant within the UK. Perhaps, as a ceiling, the largest English region could cover a population of slightly below 15

million, with the next largest being around 10 million. In Germany, with a population of slightly over 80 million, the largest state, North Rhine Westphalia, accounts for around 18 million of the total; the second largest, Bavaria, taking in about 12.5 million.

The flexibility about the precise size and number of English regions works in the opposite direction as well: it would be possible to have *more* than nine regions. Partly depending on how a federation is centrally organised, having more units of smaller size is arguably not a problem in the way that an overlarge component might be: the US manages with as many as 50 states; while Germany has 16. Nor need great variance in the size of the components of a federal UK be a problem. The US has states that range from under 1 million (Alaska) to over 35 million (California). Consequently there is no reason a territory such as Cornwall, with a population of around half a million, could not be a single component in a federal UK alongside other larger units. By this means strong regional identities such as that of Cornwall could be harnessed in order to facilitate a more cohesive federal UK.

An English regional model could also make it possible – if it was felt desirable to do so – to incorporate devolved Greater London government as a component in a federal UK alongside the other English regions, Wales, Scotland and Northern Ireland, rather than effectively demoting it to the level of local government, as arguably would happen if the 'one England' option was taken.

2. City regions: a new route to an England of regions?

Having established some of the potential merits of an 'England of Regions' it is necessary to investigate how this outcome might be brought about. Under New Labour, there were some efforts to introduce devolution using the administrative regions in England. However, the government was not fully committed to promoting this agenda and there was little evidence of popular enthusiasm for these regions, which lacked cultural and political traction. Other than in Greater London the English regions remained governed from Whitehall, with no directly elected authorities, subject only to scrutiny by bodies of limited power that did not contain directly elected members. The Coalition does not favour this regional model, so any progress towards an England of the regions must be through different vehicles.

One approach to be considered is the 'City Region' model. In recent years civil servants working in Whitehall have shown an increased interest in city regions as administrative units; and the Coalition is committed to allowing the twelve largest cities in England to have mayors, seemingly taking on some newly-devolved powers. Might city regions offer a federal approach to the structural tensions in the UK?

City regions can be defined in many different ways. A good and succinct working definition comes from the 'State of the English Cities' report of 2006 which called them: 'enlarged territories from which core urban areas draw people for work and services.' It is significant that the city region is defined in multiple contexts – work and various services – and that it takes in not only a city but an area around it. City regions can be seen as being produced historically by the emergence of transport infrastructure, the growth in car ownership, rising affluence and the increased separation between peoples' place of residence and place of work.

There are a number of senses in which city regions could be more viable vehicles for a federal approach to the UK than the existing English regions. First, potentially they have more cultural traction than the regions, since they are focussed on units, that is major cities, with established historic and cultural identities, to which it may be possible for electorates to feel attached in a way they cannot with regions. City regions may also have greater meaning to those who live within them in that they are connected to the way that they live their working and social lives. There is evidence that city regions are effective and distinct contributors to economic performance. Areas centred upon English cities have tended to have higher productivity than other areas within the English regions of which they are a part; and growth in productivity has tended increasingly to be concentrated in those same areas. In every case except one, city regions, if they become formally demarcated, are seemingly likely to be smaller than English regions, though they can overlap existing regions.

However, there are substantial limitations on the potential for city regions to provide federal solutions to the structural instability of the UK. One problem is that the London 'super-region' could be seen as taking in much of the South East and parts of the East of England region; and it could be argued that it would have a weaker identity than the existing and smaller Greater London. A second drawback is that city regions have not tended

to be a focus of administrative interest apart from – to some extent – the local government reorganisation of the mid-1970s. More recently, after the partial abandonment of the regional agenda half way through the last decade, Whitehall has focussed upon them. But, at the moment, city regions do not have the same degree of administrative entrenchment of English regions. Third, they lack the direct democratic legitimacy they would require if they were to be in any way equivalent to the devolved territories of Scotland, Wales, Northern Ireland and London, or the states comprising a federal constitution such as those of the US or Germany.

Though lately developing an interest in city regions, Whitehall has proved less enthusiastic about the devolution dimension of this agenda. The following quote comes from the Office of the Deputy Prime Minister in 2006, in a discussion of the possibility of what it called 'democratisation' of city regions:

> *Whilst the creation of new governing arrangements for London...was justified on the basis of the capital's exceptionality, it is difficult to see how this line could be held if similar models were to be created elsewhere. There might then be pressure for city-regional democratisation to be made available to the rest of England on the basis that what would be good for the likes of Manchester, Leeds, or Birmingham should not be denied to Portsmouth, Norwich or Brighton...In short, democratisation would trigger local government reform which might affect every area of the country.*

There has been more interest in Whitehall in city regional 'partnerships' involving various local authorities, government offices of the regions, and various quangos; with their establishment incentivised by central government – but no directly elected single city regional bodies. This approach seems to have been influenced by international models such as that used for the city region of Lyon, which has been developed using various different overlapping partnerships, but not a single directly elected authority for the entire city region.

There are further difficulties for the city regional agenda in its potential contribution to coherent federal structures for the UK. Problems exist in the precise demarcation of city regions. In 2006 a 112-page document commissioned by the ODPM concluded that 'It is clear that the outcome of demarcating formal City-Regions boundaries depends strongly on the

methods used, on the criteria selected and on the specific types of flow that are being measured.' Consequently, it favoured 'variable geometry' with 'different geometries for different types of service delivery'.

The 'variable geometries' approach, though it may reflect the nature of the city region concept well, would be hard to marry with the establishment of single, directly elected authorities. One problem would be establishing a network of city regions that did not overlap with each-other. Another challenge would be achieving coverage of the whole of England that was satisfactory both methodologically and to the electorates in the territories concerned. Where, for instance, would Cornwall be located? In the Plymouth city region? How would the population of Cornwall feel about this allocation? If city regions were introduced that did not cover the whole of England, then instead of an asymmetrically devolved UK, we would have an asymmetrically devolved England. This outcome might be one which represented further progress towards a reformed UK in which some of the present structural tensions were lessened, and should not be dismissed out of hand.

The Coalition government, as noted above, supports the holding of referendums on establishing directly elected mayors for the twelve largest English cities. It has not been made clear how the figure of twelve was arrived at. Nor is it yet apparent what might be the precise areas that will be presided over by these mayors, that is whether the boundaries will be those of the existing city councils, or something larger, closer to a full city region. There may be democratic problems with this programme. The model which seems to be influential here is that applied to devolution in Greater London, which has a strong directly elected Mayor and weak directly elected Assembly, lacking legislative powers. It seems possible that this democratic imbalance will be replicated or even worsened for other directly elected city mayors. The wording of the Coalition statement on this issue leaves open the possibility that there may be no directly elected assembly at all, and that such scrutiny as there is may be conducted by councillors who have been elected to other authorities, that is to say not for the specific purpose of participating in the tier of governance concerned.

Will these referendums be won in every case? The establishment of city-mayoral authorities, depending on the precise geographical units that are chosen, could represent yet another set of boundary changes for sub-UK governance; and might be viewed negatively by the public for this

reason. The introduction of a new tier of governance would entail the establishment of a layer of publicly funded bureaucracy, a prospect that voters may dislike, particularly in times of severe austerity. If the areas over which it is determined the putative city mayors are to preside are larger than those of existing city councils and closer to a city-regional scale, there are some discouraging foreign portents for the chances of referendums yielding "yes" votes. In Holland in the mid-1990s, the establishment of both Amsterdam and Rotterdam city regional authorities was rejected overwhelmingly in the proposed regions, prompting an abandonment of the programme to establish city regional democracy in Holland. Reasons for this outcome were believed to include a fear within the core cities of Amsterdam and Rotterdam that they would lose their identity if dissolved within larger regions. In post-reunification Germany a referendum was held on a merger of the länder of Berlin and Brandenburg. The citizens of Berlin voted in favour, but the citizens of Brandenburg rejected it.

In so far as it is implemented, this shift to mayoral authorities could mean that significant powers were transferred downwards from Westminster/Whitehall to a more appropriate tier of governance. While these devolved city authorities would probably not possess the legislative powers of devolved governance outside England, they might, like their London equivalent, possess significant executive powers and access to money through charges and precepts. This shift would represent to some extent a fulfilment of federal principles, one which could begin to establish a more stable settlement for the UK. Moreover, in accordance with the fear expressed by the ODPM in 2006, the lack of devolution outside these English cities might become increasingly hard to justify. What was a fear for the ODPM in 2006 might appear to others a stimulus to further desirable development.

3. A federal UK with England as a single component?

It is clear that, while an England of Regions has attractions as a means of stabilising the UK using federal principles, there have been longstanding practical obstacles to it, and that there are limitations on the opportunity for progress in the present political environment. Another approach is to consider the possibility of England as a single national component within a federal UK. In this model for a federal UK, an English Parliament and executive would be established, which would be an equivalent tier to the arrangements for devolved governance in Scotland, Wales and Northern

Ireland. By implication Greater London would become clearly established as a tier below the other devolved territories. There would continue to be a UK Parliament and executive, exercising those functions deemed necessary to be retained at UK level. A recent advocate of this approach has been David Melding, a Conservative Welsh Assembly Member, in his book *Will Britain Survive Beyond 2020?* (Cardiff: Institute of Welsh Affairs, 2009).

There are a number of possible advantages to the instigation of a federal UK on these lines. It would represent an opportunity to break with the regional agenda for England and the shortcomings associated with it. In cultural terms at least, England has greater traction than the English regions. As a nation rather than a region England could be seen as a more apt equivalent to Scotland and Wales than the English regions (though the status of Northern Ireland is more complex). England would therefore in this sense arguably be a more appropriate component of a federal UK than the English regions.

But there are potential problems as well. An English Parliament would not be building on already existing administrative units such as are in place for the English regions in the form of Government Offices, Regional Development Agencies and Local Authorities Leaders' Boards, even if all of these bodies lack democratic legitimacy. A project to establish an English Parliament could be undermined if it involved ignoring or overriding the desire for autonomy of sub-units within England such as Cornwall; and there may not be support from within London for changes which involved a downgrading of its status as a devolved territory.

From the point of view of a nation to which devolution has already been introduced, such as Wales, which provides Melding's perspective, the introduction of national devolution all round (putting to one side the status of Northern Ireland) may seem a neat way of solving the perceived problem of asymmetrical devolution. But it is not clear that there is sufficient public demand for the establishment of an English Parliament; nor the appetite for the constitutional upheaval it would entail. While some opinion polls have shown significant support for the idea of an English Parliament (both in England and elsewhere in the UK) the outcome of these polls seems to depend to a considerable extent upon how and what, precisely, respondents are asked. There was a slew of polls in 2007. When in April of that year ICM asked people in England whether or not there should be an English Parliament, 67 per cent said

yes, 24 per cent no. But in November ICM put a range of questions to English respondents, which are listed here with percentage levels of support, which painted a different picture:

Laws made by Commons with all MPs voting – those in favour 32%

Laws made by Commons but only English MPs – those in favour 25%

English Parliament within the Union – those in favour 20%

Independence from Scotland and Wales – those in favour 15%

Moreover such support as exists for an English Parliament may be soft. It could soon erode in the circumstances of a campaign leading to the referendum that would in practice be required if an English Parliament was to be formed. Support for a directly elected regional assembly for the North East region of 2004, which seemed initially to be strong, dissipated in this way. Further confirmation that an English Parliament is not a political priority is provided by the lack of commitment to this idea by any of the main UK political parties, suggesting that none of them regard it as an idea of great popular potential. Single-issue parties running on this ticket have achieved little success.

It is often held by those of a federal disposition that the preponderance of England may make for an unworkable federal settlement. Attention is often drawn to federations elsewhere in the world that contained a single dominant state within them and proved unworkable, such as in the West Indies, of which Jamaica was the pre-eminent member. But the stalling of the English regional agenda has encouraged some of a federal bent to question whether a "one England" federation is genuinely unworkable.

David Melding asks:

> *in what sense would England be more dominant under a federal rather than a partly devolved unitary constitution? It would seem more plausible to argue that a unitary constitution would be a more effective vehicle for English domination.*

This point deserves consideration. One answer could be that the dominance of England under a unitary constitution was perceived by some as being abused at the expense of Wales and Scotland; and the introduction of asymmetrical devolution can be seen in part as a response

to this supposed tendency and a safeguard against future such behaviour. The introduction of an English Parliament could lead to outcomes that encouraged the view that such abuse was returning.

The population of England, which stands at slightly over 50 million, accounts for more than 80 per cent of the UK total of 60 million. Its economic dominance is greater still; and the special position of London as an international city region accentuates the imbalance further. Important issues would need to be addressed about the central structures of a federal UK along these lines. If the UK were to follow the model of a bicameral federal Parliament with an Upper Chamber composed of the governments of England, Wales, Scotland and Northern Ireland (similar to that used in Germany) the issue of how many votes were allotted to each government in the Upper Chamber would arise. If the English government was allotted votes commensurate with its population, it would be able to outvote all the other governments combined, surely producing resentment in the UK outside England.

David Melding acknowledges that the size of England provides the basis for a possible criticism of the model he advocates, both suggesting safeguards against it and offering counterarguments. He states that:

> *A constitutional court could act as the guardian of national rights. And a reformed House of Lords could contain a disproportionately large number of Celtic members, a useful federalist device established by the American Senate. The strongest safeguard would be a constitutionally enshrined right to secede which would moderate the behaviour of the most diehard centralists intent on assimilation.*

All of these proposals would seem essential to making a federal UK with England as a single component a viable entity. But they may not be sufficient; and may generate as well as solve problems. In order to act as an effective counterweight to a potentially dominant England, Celtic overrepresentation in a reformed House of Lords, if it was a non-directly elected body comprising the four territorial governments of the UK, would have to be considerable; so great in fact that it might provoke intense resentment within England. A way of avoiding this problem would be an elected upper chamber the members of which could be expected usually

to divide along party rather than territorial lines. Another approach would be the establishment of a unicameral UK Parliament.

A constitutional court, as proposed by Melding, would be able to protect the rights of the different tiers of governance, including those of the non-English territories which composed the UK federation. But there is a possibility imbalances could be created for a federal UK simply by the English tier of governance operating within its proper spheres of action, depending on precisely how powers were divided up between different tiers of government. For instance, if responsibility for health and safety and food hygiene was located at sub-UK level, suppliers of goods and services from elsewhere in the UK for whom England was a substantial market might be obliged to comply with changes in regulations that took place in England, regardless of the position in other UK territories. England could be seen as in effect dictating to the UK. Were fiscal powers to be decentralised to a substantial extent, it is possible that policies adopted in England could theoretically have either deflationary or inflationary consequences for the UK economy as a whole, although for this possibility to become real the degree of tax-varying powers would have to be far larger even than those envisaged for Scotland by the Calman Commission.

While in any federal constitution, decisions taken within one component are likely to have an impact on others, it may be that in a 'one England' federal UK those impacts could be so great as to be dangerously destabilising. Any federal UK with a single English component would have to take into account such dangers when powers were being allotted and dispute resolution mechanisms devised.

To some extent the mere existence of an English executive would represent a challenge to the authority of the UK executive; and destabilising conflict between an English First Minister and UK Prime Minister, whether of different or the same party, would seem at some point to be inevitable and difficult to resolve. The right of secession advocated by Melding would seem to be a worthwhile safeguard which could serve to moderate English behaviour. If Wales, Scotland and Northern Ireland had a clear route by which they could leave the Union if they chose, England would be discouraged from abusing any potential advantages it possessed.

The chances of significant movement towards England as a nation within a federal UK are at present slim. When it considers these issues, the

Conservative Party, consciously or otherwise, tends to approach problems of asymmetry within the UK from the perspective of England as a nation; and since the main base of Conservative electoral support is within England, it might expect often to be the largest group within an English Parliament, were one established. Equivalent considerations no doubt influenced Labour and the Liberal Democrats in their support for devolution in Scotland, Wales and to an extent London. But the usual conclusion of Conservatives has been that, rather than establish an English Parliament, there should be changes to voting procedures within the UK Parliament so that only 'English' MPs voted on 'English' issues. This idea has always suffered from serious problems of definition and seems to be more of a rhetorical device than a workable proposal. While it was included in the 2010 Conservative manifesto, the Coalition is committed only to establishing a committee to examine the West Lothian Question, which can reasonably be interpreted as a way of avoiding or at least postponing dealing with the issue.

Despite the undoubted difficulties with the model, in federal analysis of the UK the idea of a 'one England' approach has often been too readily dismissed. There are clear attractions associated with it. While the relative size of England within the UK and the possibility of problematic anomalies cannot simply be ignored, there may also be remedies to these difficulties if they emerge. More important than the underlying philosophical questions, however, is the patent fact that the political momentum that would surely be necessary to bring about a 'one England' federal UK is at present lacking, with such pressure towards federalisation as exists tending to be towards the establishment of devolved cities or city regions within England.

Part Two: Local government, by Prof. George Jones

1. The Constitution and the Federal Spirit

Local government is both part of the Constitution and expresses the federal spirit of opposition to the concentration of governmental power in one unitary place.

Local Government is elected; has its own tax; its own powers from Parliament; and is responsible, in distinct areas, for public services from cradle to grave, 24 hours a day, and in emergencies. It is a unique element of our government and Constitution.

Since the federal idea values decentralisation, to avoid power being monopolised in one central place, federalists should champion local government.

2. The threat of Regional Centralisation

But federalists may fall into a trap, especially in England.[1] They may advocate 'regionalism', splitting England into regional governments. From the perspective of the places where we live, our localities, cities, towns, counties and villages, the regional level looks like centralisation, with the region taking functions from local government. This 'regional centralisation' can be more constraining for local government than national centralisation since it is exercised closer at hand; its interventions are more oppressive, because they are carried out by people who feel they know better from being nearer to the localities than those in central government. Regions are not spontaneous natural units that have emerged from settlement patterns and that people identify with. They do not comprise natural communities; they do not constitute political communities, but are artificial, based on lines drawn on maps by central bureaucrats, without any clear accountability to local people.

Today's regional institutions are essentially regional administration - arms of central government penetrating sub-national areas to achieve central objectives in ways the centre thinks right.

[1] Local government in England is the responsibility of the UK Parliament; in Scotland of the Scottish Parliament, in Wales of the Welsh Assembly and in Northern Ireland of the Northern Ireland Assembly.

3. The desired Balance of Power between central and local government - from a federal perspective

The starting point for devising the desirable relationship between central and local government is to answer the question posed by the Layfield Committee in 1976 and repeated as the key question by the Lyons report of 2007. It is about a choice the country has to make:

"…whether all important governmental decisions affecting people's lives and livelihood should be taken in one place on the basis of national policies; or whether many of the decisions could not as well, or better, be taken in different places, by people of diverse experience, associations, background and political persuasion." (page 299, para 63).
Federalists should choose the second, as did Layfield and Lyons. This choice is fundamental since there is no point designing governmental, administrative and financial arrangements that favour decentralisation, if the political will of our elites and our political culture support centralisation.

There are optimistic signs. The Government itself now recognises that the first approach of the New Labour government from 1997, directing local government through top-down targets and a range of inspectorates, did not deliver the improvements the Government hoped for. It has a new rhetoric that favours decentralisation, 'to communities and individuals'. But centralist assumptions still drive its actions, as in the salt-and-grit saga, current discussions about adult social care, and its refusal to act on the balance of funding. National targets and standards have morphed into national entitlements. The Conservatives have condemned Labour's centralisation and project themselves as champions of localisation, although as the time for them to be the national government looms closer some of them have expressed reservations to allay anxieties about 'post-code lotteries' and Michael Gove seems to have promised to overrule local planning decisions. In the past Oppositions have been strong advocates of decentralisation, but once in office, and embraced in the silken cocoon of the civil service, they have quickly become converted to the advantages for them of centralisation. The Liberal Democrats have long been the most decentralist of our political parties, and may be able to exert some influence against centralisation in a possibly-hung future parliament.

Another optimistic sign was the report of the Communities and Local Government [CLG] select committee on *The Balance of Power: Central and Local Government* published in May 2009 (HC33-1). It concluded "The power to govern in England remains too heavily centralised to be efficient or effective. Put simply, the balance of power between central and local government in England is currently in need of a tilt towards localities…Not only should there be a shift in the balance of power, it should be given a degree of permanency." [page 61]. But the Government's response was weak – leaving the issue for further consideration.

4. Entrenching the desired Balance of Power

How can we ensure that the desired balance of power between central and local government is sustained – can we entrench it? The problem at present is there is no codified British Constitution, or organic fundamental law, in which central-local relations is embodied. Statute is supreme, and an Act of Parliament, in effect a decision of the Cabinet supported by a Commons majority, can do what it likes. It can amend the powers of local government, even abolish it. In recent years the constitutional status of local government has been significantly altered, not by an explicit decision of central government to undermine local government but by a series of separate decisions emanating from different departments to tackle particular problems of services and finance. The cumulative effect of these discrete decisions has been the undermining of local government. What can we do about it?

Local government has no constitutional protection. Since we are not likely in the foreseeable future to acquire a written Constitution in which local government is guaranteed, we need to look in other directions to *quasi-entrench* its status and role, and relationship with central government. The European Charter of Local Self-Government which the British Government belatedly signed up to in 1997 has provided no protection against centralisation, because it is littered with qualifications and let-outs, and the Concordat between central and local government launched jointly by CLG and the Local Government Association [LGA] in 2007 is a feeble and largely unknown document, as the select committee showed. The attitude of our centralizing departments was displayed before the Committee when a departmental Minister, asked about the Concordat, appeared baffled and not even aware of what the Concordat was,

although the stated intention of the Concordat was to influence the working of the whole of Government and not just CLG. The Concordat can hardly change attitudes if even departmental ministers do not know about it. However, the Charter and the Concordat provide a useful starting point for anyone wishing to write a more effective document.

The Committee recognised a major effort was required to change the culture of central government. It proposed a Constitutional Settlement embedded in a constitutional statute and monitored by a Select Committee of both Houses of Parliament, with a requirement for proposed legislation to indicate whether it is in accord with the provisions of the constitutional statute, so that the constitutional settlement cannot be ignored. The joint committee would issue reports on bills and activities of departments that gave it concern, so that parliament would have an opportunity to debate alleged breaches of the statute, and it would issue an annual report reviewing the state of central-local relations, showing the cumulative effect of changes which may not be seen as significant when merely considered on their own. This approach would not entrench the relationship but ensure that any significant changes in the balance were made explicitly with an awareness of their consequences.

The aim is to shake the prevalent culture of Whitehall, ensuring that specific proposals from the Executive comply with the constitutional framework. Changes in the culture and attitudes of departmental ministers and civil servants are not easily achieved. The present secondment of civil servants from local government, and indeed their appointment to top positions, has had limited effect. The main way to alter their attitudes is to make them work in a new way where local government is treated as an equal partner and not as a section of the department. That is why new constitutional arrangements are essential - to permeate deep into departments. The Select Committee realised that the required shift in the balance of power can be achieved only by radical change.

5. Financing local government to support the desired balance of power between central and local government.

Once the desired balance of power is established in a constitutional statute, we can then devise a financial system to support that balance. The present system, where central government controls 96% of taxation, and only a small proportion is controlled by local government (capped by

central government), is no basis for responsible decentralised local government. It encourages central interventions in local government, and it weakens the electoral process by limiting the choices that can be put before local voters.

The principle underlying what should be done is clear and was expressed by the Layfield Report. The Committee was concerned with achieving responsible and democratically accountable local government. It stated:

[page 283, para 2] *"whoever is responsible for spending money should also be responsible for raising it so that the amount of expenditure is subject to democratic control…The financial arrangements should bring home to those taking decisions the economic consequences of the choice between consumption and investment."*

[page 286, para 12] *"If local authorities are to exercise discretion over the way they carry out their functions and to determine the level and pattern of expenditure on them, they should be responsible for finding the money through local taxes for which they are accountable."*

[page 72, para 25] *"Local councils would be responsible to their electorates for both the expenditure they incurred and the revenue they raised and, above all, for increases in either."*

The solution is simple, as John Stewart and I have argued since our days on the Layfield Committee: to ensure the lion's share of local taxation is raised by local authorities from their own voters. Local government should keep a reformed Property Tax, and add to it a Local Income Tax, so that local government will no longer be dependent for most of its revenue on central government, acting like a drug addict always seeking its fix of central grant. A property tax plus local income tax is preferable to a sales tax because they bear on voters in a locality. VAT or a sales tax do not promote local accountability.

There is no point in making such a financial change and the constitutional settlement it is designed to reinforce, with all the upheaval involved, unless there is a change of political culture and behaviour in favour of decentralisation. There must first be the political will to make the choice in favour of decentralisation before embarking on reforming the financial system.

6. Current fashions and their limitations

While the Government under Gordon Brown emphasised its concern for Constitutional Reform, the Ministry of Justice in charge of the constitutional-reform programme ignored local government, as if it is not a key element of the Constitution. Mr Brown's Government this year even failed to consider local elections when making proposals for electoral reform. Local government is the responsibility of the Department of Communities and Local Government, which is failing to address the two critical aspects of reform – establishing the constitutional settlement and switching the financing of local government from predominantly national taxation to local taxation. Instead it pursues a number of distractions from the central issues. These approaches seem mainly instruments created to help central government achieve its objectives rather than to promote locally-accountable decision-making.

(i) Local Strategic Partnerships (LSPs)

Local authorities are now expected to be linked to other local authorities, other public-sector bodies, voluntary and independent organisations, and the private sector in the provision of public services. LSPs began without any statutory authority, and now have only a limited statutory base. Apart from their vague constitutional status, the big problem with LSPs is about accountability. If local authorities were in the lead role, as they should be if they are regarded as "place-shapers" that determine the development of their localities, there would be no problem. But the Government has given them the lead role but without the powers to back it up. Local authorities have no power to insist their visions prevail in the partnerships. Even after using all its influence and persuasion, elected local government cannot impose its policies on reluctant other non-elected partners, who are accountable to central government for meeting targets. The regional offices of central-government departments keep a close watch on the LSPs, playing a major role in them and urging them to follow national targets and priorities. Local authorities should be allowed to make their own partnerships with whomever they want, and other partners should be under an obligation as a last resort to follow the directions of the local authorities, and not just to have to take account of their decisions.

(ii) Total Place (TP)

The Total Place initiative has won wide applause. The idea is appealing. Under the auspices of LSPs, and with local government in the lead, the

total package of public spending in an area should be counted. Then an examination should be made of how this money should be spent most efficiently and effectively to achieve common goals. Thirteen areas have acted as pilots for different policy themes, which should inform the forthcoming budget decisions of central government. About 70 other local authorities have found the TP initiative attractive and have been engaged in similar "parallel" exercises. Hopes are high, but are likely to be dashed. The policy themes are limited, certainly not Total, which prevents consideration of the overall allocation of budgets. Previous attempts at something similar failed because government departments and their associated quangos were not been prepared to defer to local government locally, and continue to insist on following their national statutory responsibilities, and being accountable to ministers not local government. This attitude is especially strong over budgets, with the centre focussed on savings. Unless there is merging of budgets, Total Place will cause great disappointment. It is a catalyst for debate not for radical change.

Total Place to be effective needs to engage political leaders: it is often seen as an officer function rather than a political function which should engage local leaders. National leaders need to be involved too. Total Place could have beneficial effects if the Prime Minister and Chancellor of the Exchequer led the Cabinet to direct the spending departments to pool their budgets with those of local government, and decentralise the accountability for those budgets to local government. At the same time the Treasury should decentralise a chunk of national taxation to local government so that the Treasury and local government could act as allies in seeking the wise use of public resources.

(iii) Scrutiny

The present Secretary of State for Communities and Local Government lays considerable stress on scrutiny as the power lever for elected local councillors, extending its scope from the activities of their own local authorities to those of other public-sector bodies. Scrutiny, however, is the main feature of the changes made by the Local Government Act 2000 that councillors have found hard to adopt. They were once people who decided. Now they scrutinise others who take decisions. They find it impossible to appeal to their voters with the slogan "vote for us to do scrutiny". Despite mounds of regulations and advice from Whitehall, and from the Centre for Public Scrutiny on how to do it, councillors have found

the role unsatisfying within their local authorities, and it is amazing that a minister wants it to cover other bodies too, and expects it to be effective. Even if a scrutiny committee makes recommendations internally the executive may ignore them. This weakness is even greater for scrutiny of external organisations, with their own statutory responsibilities and lines of hierarchical accountability.

If low turnout and lack of candidates are problems for local government, the answer may be sought in central government's relegation of councillors to scrutiny, and its weakening of local government's powers and discretion. It is a wonder so many stand as candidates and vote, especially when local government raises so little in local taxation.

7. Further Distractions

(i) Local government boundary change

Central government has gone ahead with restructuring local government into larger and unitary authorities. The Government suffers from the delusions of sizism that bigger is better, and that there are only economies, and no diseconomies, of scale. It fails to recognise that two tiers of local government are nearly universal in Europe, even where there is a regional tier. This exercise has been a distraction of staff and resources from other more important tasks, and has stirred up intense local controversy when co-operation and the seeking of consensus through partnerships and sharing were also being advocated. The consequent reduction in the number of elected councillors has worsened the already damaging democratic deficit, which means the British people compared with those in other European countries have the smallest number of elected representatives in relation to population. Local authorities should make their own arrangements for collaborating with others, like sharing staff, even for amalgamations: they know best their local circumstances and conditions.

(ii) Directly-elected mayors

Central government, and the Conservatives, continue to press for more directly-elected mayors, despite local authorities preferring a leader/cabinet model, as in central government itself, and the public rejecting elected mayors in the majority of referendums. It is striking that central government, which has been widely criticised for its 'presidential' prime ministers such as Blair and Brown, should urge a similar one-person rule on local government. A cabinet system enables public policies

to be explored from a variety of perspectives and by different interests; it brings to these collective discussions the political heads of departments who have responsibility for implementation of the policies; it locks them into cabinet decisions so overall policy can be more coherent. It is harder for one person to co-ordinate an array of departments below than for a cabinet of heads of departments to be co-ordinating: horizontal co-ordination is easier to achieve than vertical co-ordination.

In other countries with elected mayors the councils are not as weak in relation to the mayor. The English system of directly-elected mayors also has no provision for recall of mayors who have lost the confidence of their councils and citizens. Elsewhere it is common to have provisions for the council by a special majority to force the retirement of a mayor and hold a new election, or for the people to petition for a new election of a mayor. In the past leaders of councils have shown they can be just as visible publicly as directly-elected mayors – like Ken Livingstone at the GLC or Shirley Porter at Westminster. Local authorities should be empowered to devise their own internal governmental arrangements: they know best what will suit their localities.

8. A critical question – what to do about inspection?

Inspectors of certain local-government services have a long history, and it is hard to envisage their abolition. In recent years their roles have been expanded, intervening far more over more aspects of local provision, and central government has used them as instruments to enforce its targets on local government. The Audit Commission has become the coordinator of the inspectorates, devising league tables of local-government performance that often trigger central-government interventions in those local authorities it calls underperforming. The Audit Commission in its current phase has relaxed its supervision of local authorities, operating a system called the Comprehensive Area Assessment [CAA], which entails fewer targets and greater reliance on the views of local people about how their local authority is performing. But this process still promotes what external inspectors think, not what local citizens think, thus undermining local accountability. It is based on the doctrine of the infallibility of inspectors, which limits local innovation, since inspectors tend to promote current accepted practice. Local authorities have called into question the judgments of the inspectors and of the Audit Commission, and the Conservatives have promised if elected to abolish the CAA.

Inspectors can play a useful role in providing data about the comparative performance of local authorities, and exposing serious defects. But they should not be the instruments of central government to enforce its objectives through sanctions or through triggering sanctions. They should assist local councillors and citizens by providing information that will enable them to make better judgements about their localities.

9. Recommendations

The Government should decide in favour of decentralisation.[2] It should state it has chosen the local responsibility and accountability route from the second part of the Layfield and Lyons choice. It should announce a big-bang change, and not tinker with adjustments. It should bring in a new constitutional settlement for local government embedded in a statute, and give local government a chunk of income tax, whose rates would be determined by each local authority, to supplement but not replace the council tax which should be reformed into a fairer property tax. The centre should concentrate its energies on these two approaches, and give up trying to control local government as if it were a division of central government. This set of recommendations would lead to a constitution for the UK imbued with the federal spirit.

10. Postscript: After the General Election

The Coalition 'programme for government' states the Government 'will promote the radical devolution of power and greater financial autonomy to local government and community groups. This will include a review of local government finance.' The Secretary of State for Communities and Local Government, Eric Pickles, has said his priorities are "localism, localism, localism" and he has acted quickly to phase out some 'ring fencing' through specific grants, to cut down inspections of local government, including the Comprehensive Area Assessment, and to abolish the Government Office for London and some quangos with regional outposts. The Queen's Speech promises within the Government's legislative programme a Decentralisation and Localism Bill, which could introduce for local government 'a general power of competence', enable local authorities to restore the committee system that was abolished in the Local Government Act of 2000, and free local authorities from a number of central constraints.

2 "The Government" in this article refers to the UK Government responsible for English local government, and to the Scottish, Welsh and Northern Irish Executives responsible for local government in their countries.

While such initial steps and promises are helpful for local government, some other actions and statements of Mr Pickles appear to express a centralising spirit. He is preparing to stop local authorities from determining how to collect household refuse, and how to disseminate information to their local citizens, and to require continuous improvement to the energy efficiency of new housing. He seems ready to promote directly-elected mayors in 12 city regions where councils and citizens have shown no enthusiasm for such a change - one wonders how directly-elected mayors and the restored committee system will be compatible.

The promise of a full review of local government finance is a sign the Government will not tackle the fundamental weakness of local government. There have been about 10 reviews of local government finance since the Layfield Report of 1976, most recently the Lyons Report of 2007. The facts are known: but the political will to bring in reform is lacking. Another review is just a stalling device, leaving the current defective arrangements in place. The recent budget has allocated disproportionate cuts in public expenditure to the Department for Communities and Local Government, and hence to local-government services, which are not 'protected' like health and international aid. Already local authorities, public-sector trades unions and sectional interest groups are complaining about drastic central cuts. Worst of all for local-government's accountability to its citizens Mr Pickles is imposing a council-tax freeze (capping) on all local authorities, which is directly contradictory to the Coalition's promise of 'greater financial autonomy to local government'. The right of a local authority to determine its own level of local taxes is a necessary part of a 'radical devolution of power'.

A major confusion lies in the Coalition's commitment to devolve power to local authorities and community groups. It is not clear what the relationship is between devolution to local authorities and devolution to community groups, or what exactly are community groups or what their relationship will be to local authorities. It is not known how self-selected community groups are to be made accountable for spending public money, how their membership is to be organised, and how their decisions are to be reached. The danger is that representative democracy embodied in elected local councils is to be diminished in favour of amorphous unaccountable community groups.

One of the most hopeful developments of the last eighteen months had been Total Place. It does not feature in the Coalition programme, even

under another name. The prospect for joint or shared budgeting of all public bodies in a locality under the leadership of local government looks far off. Joining up is likely to be more difficult with Whitehall departments protecting their own budgets and operating through their own regional sections and associated quangos. While the Department for Communities and Local Government may be friendly towards local government, the other Whitehall departments, which spend more in local areas than do DCLG and local government, continue to pursue their own agendas that are not sympathetic to localism. Work and Pensions, Education, Health, the Home Office and Transport are silo empires that show no sign of relaxing their centralising ambitions. Michael Gove praises his bill to set up academies because it will reduce local government's influence over schools. Andrew Lansley's desire to have GPs as commissioners of health services will further fragment Total Place attempts to bring local government and health services together. Looming ahead are elected police commissioners, and perhaps elections to other boards or trusts, which will disrupt Total Place vision of devolving power to local authorities to make key choices on allocating resources across all public services in a locality.

The future looks bleak for local government, especially if the proposed Decentralisation and Localism Bill enacts that residents should have the power "to veto excessive council tax increases", even when those increases express the policies the council was elected to carry out. One wonders why anyone would want to be elected to a council whose most important decisions can be overturned in a referendum. It would undermine the electoral process itself, just as if the Coalition's budgets could be vetoed by a referendum.

Despite the Coalition's political rhetoric in favour of decentralisation the dominant forces in Whitehall are still centralist. The Federal spirit of localism has not yet permeated the national establishment.

Part Three: A federal constitution, by Dr. Andrew Blick

So far this pamphlet has focussed on federal perspectives as they apply to the decentralisation of power and the way in which this dispersal manifests itself. But the true value of federal approaches is that they can integrate both lower and higher tiers of governance and determine the allotment of powers between them, creating a cohesive whole. While devolution has moved – and could continue to move – the UK in a federal direction, a new UK settlement devised along federal lines would also involve development at the centre. A full federal settlement would have to include within it the UK Parliament, which could be either unicameral or bicameral. As discussed above, if there were a bicameral Parliament, then the Upper Chamber would probably comprise either the governments of the different territories making up the UK, or directly elected representatives. The second option seems the more plausible for the UK for a number of reasons. If a federal UK is a developing entity, without all of England immediately receiving devolved tiers of governance, then there would be problems in including members in an appointed Upper Chamber from those parts of England to which devolution had not yet been extended. There is also the problem, noted above, of whether to grant the English government voting power commensurate with the relative size of the English population. The present government is committed to bringing forward proposals for an upper chamber which is mainly elected, using a system of proportional representation. In a federal UK, the small appointed portion could include in it the governments of the different territories of the UK. If and when a chamber of this sort is created, and if the planned referendum on switching to the Alternative Vote system for elections to the Commons yields a 'yes' vote, then the UK Parliament would take on an uncanny resemblance to the Australian federal Parliament.

Other central components of a putative federal UK would include a codified constitution. A Labour/Liberal Democrat coalition, had one been possible, would have been more likely to produce progress in this area than the existing Coalition. But within what is labelled the 'unwritten constitution' of the UK, the devolution settlements introduced under New Labour have - in the cases of Wales, Scotland and London at least – clearly in practice become firm. The new government not only accepts this portion of its constitutional inheritance, but is committed to extending it (as was the previous government). The proposals of the Calman

Commission on the Future of Scottish Devolution, which entail a substantial net increase in decentralisation from the UK to the Scottish tier of governance, including the transfer to Holyrood of significant new fiscal powers, are seemingly to be implemented. The Coalition is also committed to holding a further referendum in Wales on the extension of devolution there (as was already planned under Labour), although there is some discussion about timing. In this sense the de facto UK constitution continues to shift in a federal direction. Another New Labour inheritance is the Human Rights Act 1998. It could be seen as the embryonic version of a Bill of Rights which might form part of a fully codified UK constitution, to which all tiers of governance, including the UK Parliament, would be subject. The Coalition parties disagree over the appropriate approach to the justiciability of human rights. While progress towards a full Bill of Rights is at present unlikely, the Human Rights Act is not under immediate threat.

An important theme of our recent work on a federal UK has been the idea that a broad process of federalisation, rather than the immediate adoption of a federal constitution, has been occurring in the UK. For those of a federal disposition, it might be desirable to see the development at the centre of mechanisms which could permit and encourage this tendency. In particular, consideration could be given to the idea of providing 'full treaty making powers' for local authorities, enabling them to join together into larger units for purposes of their choice; as well as establishing means by which local areas – either in England in the UK as a whole – could call down powers from higher tiers of government. These ideas could fit well with the decentralising rhetoric of the Coalition. However, any such arrangements should take into account the need for direct democratic accountability for the wielding of authority; as well as the full democratic and political implications of the introduction of such a system. Finally, it might be necessary to deliberate more carefully and fully over which powers it should be possible to devolve, which should be retained at UK level, and which should be shared between different tiers.

Conclusion

The New Labour governments of 1997-2010 have left behind them a legacy of constitutional change that is both substantial and incomplete. Many of the reforms implemented in this area, though not avowedly part of a federal agenda, shifted the UK in a federal direction; including the downward devolution of power from the UK to new, democratic, intermediary tiers of quasi state-level governance; and changes at the centre such as the Human Rights Act – potentially an embryonic UK Bill of Rights. Some of these innovations - in particular devolution – appear secure parts of the unwritten constitution, with the new Coalition government willing not only to accept devolution, but continue its already planned extension.

Perversely, the New Labour reforms have shown how some of the ideas associated with federalism can benefit the UK, but at the same time demonstrated the exceptional difficulties in applying them to the UK. The UK has made a significant contribution to the intellectual development of federalism; and has been involved in the drafting of various federal constitutions internationally. But the failure of federalism to take in the very country where it was in large part originated makes self-evident the existence in the UK of significant obstacles of some kind to such a development.

These barriers are numerous and interrelated. Amongst them are the traditions of resistance to formal constitution-making; and the cult of parliamentary sovereignty. The obstacles addressed in this pamphlet primarily involve various kinds of asymmetry, including demographic, economic, political and cultural imbalances in the UK. Federal principles can potentially help address the difficulties associated with asymmetry. But at the same time, asymmetry can make problematic the application of these same federal principles. As a consequence, ideas of an arguable federal nature have been applied only in a piecemeal fashion. While meeting with a degree of success, for instance with the growing popularity of devolution in Wales, these programmes have exposed and possibly even aggravated other difficulties, such as the potentially problematic imbalance between the size of England and the rest of the UK. These complications in turn make more difficult the fuller federal programme that could potentially resolve them.

While substantial progress has been made towards a federal UK over the last thirteen years, it cannot automatically be expected that the next thirteen years will see the same degree of development. Three possible federal directions for the UK have been discussed in this pamphlet. The 'England as a nation' route, though it should not be dismissed out of hand, seems the least promising. Aside from the structural difficulties it presents, the Coalition has given no indication of support for this option. On local government, a mixed message has been presented by the new government. While it presents a general image of decentralisation, it has proposed a regime of strict limitations on the fiscal autonomy of local government; and other restraints.

The area in which there is the most immediate prospect for some kind of progress is in the introduction of directly elected mayors to the twelve largest English cities. It seems that the establishment of these posts would involve the devolution of some central government powers to a lower tier of governance. In so far as these powers will be those that are more apt to be exercised at this lower level, this change will represent development in a federal direction. This devolution will be subject to referendums, so if introduced it will enjoy a degree of entrenchment, another quasi-federal characteristic. Furthermore, since similar proposals were contained in the Labour manifesto, there can be said to be cross-party consensus around them.

Those of federal inclination might be advised to welcome such a development, not as the ultimate fulfilment of their objectives, but as progress in accordance with the 'England of Regions' model, the merits of which were discussed above. If these mayors are introduced, possible new federal fronts will then be opened up. One could involve campaigning for more effective democratisation, with city mayors fully accountable to a specifically elected chamber, in accordance with international norms for such office holders (similarly, federal analysis suggests that the London Assembly requires strengthening if it is to perform this role effectively). Another would entail demanding that regional devolution be extended to all parts of England. Such an expansion of devolution might take into account the idea of city regions which extend beyond the core city, as discussed above, as well as other possible regional models. While the old English regional agenda is no longer viable, a new one may appear in its place.

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