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## Federal Trust Policy Commentary

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### An American Perspective on the Federalist Debate in the UK

*By Dorian Barrero-Dominguez*

Asked to write a "visitors commentary" concerning the conference that took place on 24 March entitled "The Future of Devolution: Status Quo or Federation?" and any similarities it had to ongoing debates in the U.S., my initial thought was that there were virtually none. After giving it some more thought however, I realised that while the discussion differed in content from anything we have in the U.S., the context of the debate was actually quite similar. While some in the U.K. are still fighting for the adoption of a federalist structure and constitutional entrenchment, these are two realities that are taken for granted in the U.S. However, the struggle for power between state and national government that characterises political life in the U.S. is similar to ongoing debates in the U.K. regarding if and how power should be transferred from a dominant centre to a weaker periphery.

This struggle between state and national government has been part and parcel of our political process since the early days of our founding. The tension between local, state, and national government is both a gift and a curse because it has at times led us to the brink of disintegration but has also proven accommodating enough to address these rifts in a way that has ensured our durability as a collection of states. Even today, the main issues that continue to polarise our nation concern the rights of states vis-à-vis the national government and vice-versa.

But while issues like gay marriage, gun rights, and abortion evoke the most passionate debates among citizens of different states or even different cities within a state, we need not worry about protecting our fundamental rights as U.S. citizens which are enshrined in our Constitution. Our federal structure too has evolved in such a way as to ensure that even the biggest differences are debated openly in legislative bodies, courtrooms, and on the campaign trail rather than on the streets or with threats of force or secession.

Likewise, the power of judicial review spelled out in the Constitution, that is to say the power of judges to interpret legislation and disputes in light of what is set forth in the Constitution, has also proven capable of successfully arbitrating disputes within a federalist settlement. While judicial review has at times proven to be the biggest obstacle to reform, it has more often served to protect citizens from the government by ruling an act of Congress or an executive order unconstitutional. Herein lies the fundamental difference between the systems of government in the U.S. and the U.K. Our American debates centre on interpreting the Constitution and the rights and responsibilities of local, state, and national government, but we can take for granted that our rights as citizens are not in jeopardy of being severely curtailed or that the national government will centralise power in a way that would make it easier to do so. The Constitution outlines specific rights of citizens as well as those of the state and national government and provides mechanisms through which personal and intergovernmental

disputes are settled and/or interpreted. The same formal safeguards do not appear to exist in the U.K. As MP Graham Allen pointed out at the conference in Westminster, there exists "a democratic culture" in the U.K., but not a "democratic structure" which is necessary to guarantee a democratic political arrangement in the long run.

At this point, some readers may be tempted to point to the Patriot Act in the U.S. as evidence that we too lack democratic safeguards that can ensure the protection of our civil liberties. There are three important facts to remember when presenting this argument: 1) While the original version of the Patriot Act presented to Congress did restrict some civil liberties, particularly by allowing the government to phone tap individual phone lines without having to obtain a warrant, Congress obtained concessions from the Bush administration, safeguarding the civil liberties of U.S. citizens by restricting the use of unwarranted phone taps to non-U.S. citizens; 2) After seeing the way in which the administration misused the Act, congress only renewed it after severe changes that sought to address some of the civil liberties violations that had occurred; and 3) To this day, many judges across the country are busy debating the constitutionality of many provisions of the Patriot Act in an effort to revoke the entire legislation and many parts have already been deemed unconstitutional. In short, while there was an attempt by the executive branch to consolidate power and overlook the rights of individual citizens in the name of safety, the balance of power provided by the Constitution has allowed both the legislature and the judiciary to ensure that civil liberties are protected. That I know of, no such formal protection exists in the U.K.

It is a surprise to me that a country that has contributed so much intellectual capital to the debates concerning democracy and federalism has yet to adopt the latter and not formally guaranteed the former. Still, I do understand the difficulty of the task at hand, at least somewhat. The preservation of any union, whether it be of states or nations, requires a tireless commitment by leaders to adopt structures that can best serve diverse populations as well as public engagement to ensure leaders see these reforms through. The problems associated with further devolution or an eventual federalist settlement, particularly the idea regarding the division of England into regions, is a particularly complicated one. While putting reform measures up for a vote through referendum is surely a part of the "democratic learning process," as some commentators advocate, more must be done to change peoples perceptions and attitudes regarding a formal federalist system. In my view, the idea of a long-term project that involves redrawing regions that are "culturally resonant," building up public support and attachment to each region as well as public engagement at the most local levels of government is the best way to ensure support for and the success of a federalist scheme in the U.K.

In a democracy, few things can work for long without the consent of a considerable majority of the population. By initiating a campaign aimed at preserving the integrity of the U.K. by way of a federalist settlement, citizens can be made more aware of what federalism is and the benefits of such a system. By openly debating the issue of federalism, leaders can benefit from the suggestion of their constituents and citizens can become more directly involved in drafting a system that is more responsive to their needs as localities and a country as a whole.

Without active engagement, particularly in the areas of England, where there is much resistance to adopting a federalist settlement because it could amount to splitting it into "artificial" regions, the idea is not likely to enjoy the level of support necessary to approve it in the short run or sustain it in the long run.

For an MP working in Westminster, Graham Allen seemed to me to have a very good sense of the practicality of adopting a federal system in the U.K. The argument that policies need to work locally, particularly in areas of education, crime, and poverty is not theoretical but grounded in the idea that those leaders closest to their constituents are best equipped to deal with the unique difficulties of their communities. Our experience in the U.S. shows that national policies to deal with issues such as low academic performance, crime, and poverty are highly ineffective without a state or local government with the discretion to use the allocated resources according to the different needs of each constituency.

Take the case of poor academic performance in several U.S. cities for example. Certain studies conducted in the late 90s showed that low pay for school teachers was keeping qualified individuals from pursuing a career in primary or secondary education in certain cities; in these cases, the solution was to create a teachers union that successfully campaigned for an increase in wages and benefits and contributed to better academic achievement. In other cities where teacher pay was deemed to be sufficient to attract qualified individuals, it was believed the lack of access to resources like new textbooks and computers was contributing to low academic performance; in these cases, the solution was to inject more direct aid to resource development. In short, different cities had different problems and demanded different

solutions, all under the auspices of the national government that alone has the money to ensure that these unique solutions are enacted. When the national government has undertaken the task of drafting policy aimed at raising school standards (as it did with President Bush's "No Child Left Behind Act") while ignoring the role of local and state governments, it has consistently managed to wrongly diagnose the situation and inappropriately allocate funds by mistakenly thinking that a cure-all remedy exists for every problem.

I believe Mr. Allen was also correct in asserting that local governments have much to contribute to the national debate by way of trial-and-error policymaking meaning that a policy that works in one city can then be tried by other cities experiencing the same problem. In this instance, the prevalence of big city crime in the U.S. throughout the 1980s and 90s is a case in point. While there are different explanations as to why crime trended down so dramatically in New York City under the leadership of Mayor Rudolph Giuliani, the actions taken by his crime team were invaluable to leaders in big cities across the country. In Miami, the mayor adopted many of the same policing measures, including curfews, arms limitations, and an increase in police vigilance, and although the measures were not as successful as in New York City (arguably because there were other problems which are unique to Miami including heavy drug trafficking and a high poverty rate), the result was a substantial decrease in crime throughout the city.

In my view, the U.K. must take the issues of entrenchment and federalism seriously if it is to guarantee its survival as a union of nations and a democracy in the long run. On a practical level, a federalist structure will help assuage many of

the concerns of discontented citizens who feel that Westminster is just too remote to take their problems seriously. Rather than creating deeper divisions between the constituent parts of the U.K., a federal structure can help legitimise the union of nations because the system of government will no longer be seen as too inefficient or unrepresentative of the population as a whole. In the U.S. today, it is difficult to imagine that either Texas or Massachusetts would ever propose to secede although one cannot conceive of two more socially, economically, and politically distinct entities in the U.S. Federalism works because it is the system of government that best allows people to take part in the decision making process from the bottom up and guarantees the rights and responsibilities of state and national government by spelling them out in a formal constitution. It is time for leaders and citizens across the U.K. to commit themselves to preserve the rich democratic tradition of its people; it is my opinion that the best way to do this is by adopting a written constitution as well as a federal structure that is capable of accommodating the diversity of interests that exist in this country.