

**Regional Devolution in Europe:
lessons for the UK?**

Stanley Henig
and
Ulrike Rüb



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Note on the authors

Professor Stanley Henig is a Senior Research Fellow at the Federal Trust. Formerly Head of the Department of Politics and European Studies at the University of Central Lancashire, he was also an MP and Leader of Lancaster City Council. He is the author and/or editor of many books and articles on British and European Politics of which the most recent are 'Modernising Britain - central, devolved, federal?' (The Federal Trust, 2002) and 'The Uniting of Europe: from consolidation to enlargement' (2nd edition, Routledge, 2002).

Ulrike Rüb is a Research Officer at the Federal Trust, working on UK devolution and EU governance and politics. She is the editor of 'European Governance: Views from the UK on democracy, participation and policy-making in the EU' (The Federal Trust, 2002) and co-author of Policy Briefs on various topics of current EU debate.

Foreword

In the General Election campaign of 1997, the Labour manifesto committed the Party to 'allow the (British) people, region by region, to decide...whether they want directly elected regional assemblies.' It was this commitment of the incoming Labour government, which over the past seven years has reinvigorated the debate on devolution and regionalism in the UK. Substantial powers have already been devolved to regional Parliaments in Edinburgh and Cardiff. Later this year three regions in England - the North East, the North West and Yorkshire - will hold referendums to decide whether to introduce directly elected regional assemblies.

The following essay is a contribution to the debate on devolution in the United Kingdom, where our constitutional debate has all too often seemed to exist in a vacuum. Surprisingly few British commentators seem to recall that throughout continental Europe (and indeed further afield) a wide variety of devolved, regional and federal systems exist for sub-national government. It would be strange indeed if these systems could not provide at least some lessons or indications for the most likely and most appropriate development of Britain's devolutionary process. Commentators and politicians in this country are accustomed to considering the experiences of our near neighbours when talking about health systems, transport policies or the fight against crime. This essay suggests that the recent constitutional history of continental Europe should equally engage our interest and reflection.

Like all constitutional debates, the British debate on devolution is essentially a discussion about the division of power within the United Kingdom. It is simultaneously a debate about efficiency and legitimacy, about identity and administrative structures. There is no single, optimal outcome to which all rational electors should clearly aspire. The lessons which Stanley Henig and Ulrike Rüb draw from their consideration of the varying administrative systems of our neighbours are certainly not intended to be definitive. They are explicitly intended to enrich the constitutional debate rather than to decide it in one direction or another. A richer British debate on our devolved constitutional future is of course worth promoting for its own sake. But the Federal

Trust would be the last to complain if such an enriched domestic debate spilt over into a more thoughtful and informed discussion in this country of European constitutional questions in general. There is a clear continuum between local, national and European constitutional issues. A devolved Britain might well find it easier to live in a devolved European Union.

Brendan Donnelly
Director of the Federal Trust
July 2004

Regional Devolution in Europe: lessons for the UK?

Stanley Henig and Ulrike Rüb

Executive summary

Referendums on directly elected assemblies in the three Northern English regions are the next step in the British government's devolution programme. This essay sets out to examine what lessons the UK can derive from other European countries for this ongoing devolution process. Our particular focus is the contribution which can potentially be made to this process by federal ideas and federal thinking.

The essay examines experience and best practice in other large EU member states – France, Germany, Italy and Spain. We have looked in particular at constitutional frameworks, powers and competences, finances, regional influence on national policy-making and the actual process of bringing about devolution. Our essay compares structures and trends in these countries with developments in Britain and draws conclusions for further devolution in the UK.

Our conclusions and a variety of lessons for the United Kingdom are spelled out in the final section of the report. Although there is no single formula for devolution, European experiences offer valuable lessons for the UK. The central lessons may be summarised as follows:

- devolution to some regions generates demands from others; the process is rarely if ever reversed; 'catch up' and 'me-tooism' are common phenomena;
- devolved rights should be clearly defined and protected through spelled out procedures; there needs to be an independent institution to rule on jurisdictional disputes;
- regional financial autonomy is always limited; financial arrangements, involving equalisation, are used as a vehicle for national solidarity;
- the success of the devolved authorities will ultimately be determined by political capacity as much as by formal powers and structures; that capacity will depend at least partly on commitment by prominent regional leaders.

Introduction

This autumn the devolution process in the United Kingdom may take a next, significant step forward. Upcoming referendums in the three Northern English regions could pave the way for directly elected regional assemblies in the North East, the North West and Yorkshire and the Humber. A 'yes' in at least one of these referendums will bring major new impetus to the ongoing devolution process.

Our focus is to look at how federal thinking and federal ideas can contribute towards this process. In particular we are interested in a constitutional structure for devolution, which would contribute towards good governance and offer solutions for potential problems in the future. The remit of this study is to compare the UK devolution process with experience of other European countries, hoping thereby to derive principles, concepts and lessons likely to be helpful to the ongoing devolution process in the UK. We are looking in particular at the experience and best practice in four European countries, which in size are comparable to the UK: France, Germany, Italy and Spain. Where useful we also drew on practice in Belgium and Austria. Subsequent sections of this introduction examine the concept of a federal framework and the background to regionalism in these countries.

We have identified what we consider the main characteristics and structures underlying regional government in these countries. We look at constitutional frameworks, powers and competences, finances, regional influence on national policy-making and the actual process of devolution. Each subsection of this essay will address one of these characteristics looking at the specific experience in the four countries with some cross-references also to Belgium and Austria. The final section draws together conclusions and lessons from these subsections and sets out recommendations for the UK devolution process.

The federal framework

This essay approaches the issue of devolution from the analytical framework of federalism. The concept of federalism is based on the notion of sharing powers between different levels of government in a combination of self-rule and shared rule, and that is the reason why federal systems are often used in practice to accommodate 'unity in diversity', for example different linguistic or ethnic communities within a state. Entrenchment of the constituent units and the sharing of powers are the essence of any federal system, but the details of each federal system vary.

It is important to distinguish between federalism as a concept and its formal realisation through a political system which is considered to be a federation. One could argue that any government system inherently contains federal elements, since in practice no state

can be administered solely from the centre. However, a political system is only recognised as a federation if the different tiers of government enjoy autonomous powers and competence. This also means that federal systems do not necessarily constitute federations. In this paper we consider federal elements, structures and trends in a number of countries, including the UK, which are clearly not federations. We also look at three countries with political systems which are federations – Germany, Austria and Belgium. Devolution (or decentralisation/ federalisation) can be regarded as a continuum between the extremes of ‘fully centralised’ and ‘fully federal’ state forms. Countries may be located at any point on that continuum and they obviously move position when a process of constitutional reform leads either to further devolution or further centralisation.

Federal structures can be constructed from ‘below’ or from ‘above’. The first posits a group of independent states voluntarily agreeing to establish a new tier of governance in the form of an over-arching federal structure, as the example of the European Union shows, which has been built up from its member states. The second – the primary concern of this paper – is the idea of ‘devolutionary federalism’ and involves states devolving powers down through the establishment of sub-central governance with delegated powers. Post 1945 the western allies effectively took this decision for what became the Federal Republic of Germany.

Regions in Europe

Defining the concept of regions is complex. As far as language is concerned we have, for the sake of simplification, freely used the terms ‘region’ and ‘regional’ to apply to the tier of government immediately below the centre within any country or state. This does not imply any view as to the reality of, or the claims for, separate nationhood on the part of some of these ‘regions’. In federations the term ‘federal government’ always refers to the central or national tier. For the purposes of this paper the German *Länder* are described as ‘regions’, even though ‘states’ would be a more accurate translation.

It may be useful to consider at the outset some basic but related questions – what are regions; how and why have they come into being; what is their significance and what are they intended for? The European experience is extremely varied and there is no uniform pattern. The historical roots of the German *Länder* lie in a variety of kingdoms and principalities, which were independent before unification in the late 19th century. The broad geographic pattern is still recognisable, but only very few of today’s *Länder* – for example Bavaria and Saxony – can claim to be direct successors to these historic entities, while the others were created by the Allies after the war. Several of the Austrian regions, on the other hand, can claim a historic pedigree. In Italy, which was once divided into a variety of cities, states and principalities, some regions are historic, while

others are recent creations. Similarly, in Spain, only Catalonia, the Basque Country and Galicia are historic nations, while most of the other regions have been created very recently, after the fall of Franco's regime. In Britain, Scotland and Wales are historic nations, whilst English regions are chiefly administrative entities. In Belgium geographic factors are rather less important than language: the special brand of federalism recognises both regions and linguistic communities.

Throughout Europe decisions to establish a regional tier of government were frequently influenced by historic events: the German and Austrian federations for instance were established in the wake of war and defeat, and according to the views of the victors. In Spain regional government was created under pressure from Catalonia and the Basque Country as a reaction to their suppression under Franco and, therefore, aimed at fostering consensus and support for the new constitutional basis. Current political controversy in Italy has generated different potential regional models. The centre left has espoused devolution, whilst the Northern League uses federal language as a respectable cover for its commitment to separatism. Northern Ireland is an attempt to solve the perennial political problem of inter-community violence through a regional or neo-federal solution.

The notion of identity is closely linked to the concept of regions, in particular where there are specific linguistic and cultural differences. A pattern can be observed that once devolved institutions are established 'the heart seems to grow fonder'. This applies to areas with no strong identity, such as artificial regions in Spain, Germany and even France, as well as historic regions, for example Scotland and Wales. This may suggest that artificiality and lack of historic identity would not necessarily inhibit successful devolution in England.

There is little trace of a uniform pattern in the above. However, there are several factors generally cited as reasons for the establishment of regional government across Europe. One of these relates to a general problem confronting representative government – a decline in party membership, political engagement and voter participation. This is sometimes described as a 'democratic deficit'. Effective regional government has been seen as one way in which the gap can be bridged and voters can be re-engaged with the political process. Related to this is the notion of better policy-making, based on the idea that decisions should be taken at the level which will best be able to respond to regional needs. Economic development is often suggested as another rationale for regional government. A further factor often cited is European integration, with the introduction of a regional policy requiring regional *interlocutors* in the member states and giving rise to the notion of a 'Europe of the regions' in the 1980s and 90s. However, it would probably be more correct to say that European integration has helped create a climate of opinion within which regional devolution seems appropriate.

Our tentative conclusion is that regionalisation is by no means inevitable, but a question of political will. This is clearly exemplified by political controversy between the parties in Italy and in the United Kingdom. Few doubt the need for some form of governance below central state level, but for many this is best (and solely) met through effective local government. Indeed it is on the back of local government that one alternative to regional devolution has emerged – the so-called ‘city region’. In both France and the Netherlands there has been a good deal of rivalry between the two concepts, with attendant problems for the emergence of successful models of regional governance. However, it should perhaps be noted that some regions with obvious economic needs do not have any cities sufficiently powerful to promote the city region model.

Constitutional frameworks

Key attributes of a federation are legal entrenchment; a division of powers enshrined in law or treaty; the existence of an independent court to determine disputes of competence; and separate finances. Entrenchment is, arguably, the most important, since the others can be seen as flowing from this core principle. The position and role of the state and regional tiers of government are enshrined in a basic constitutional document, requiring the agreement of both before it can be amended. Many systems incorporate federal ideas and federal thinking, but without entrenchment they cannot be considered as federations. Germany, Austria and Belgium are the three federations within the EU. All three have a tight constitutional structure with little applicability to the very different circumstances of the UK. However, for the UK observer it is worth looking at Spanish experience in some detail. In both countries there are historic regions with aspirations to be recognised as countries or nations. Side by side with these are examples of artificial regions with little or no history.

Spain

Spain is not formally a federation: the constitution recognises that Spain is divided territorially, but it does not prescribe a formal federal order nor does it entirely entrench regional autonomy. However, the Spanish system contains strong federal elements and, in reality, it would be almost impossible to overturn regional autonomy, particularly where the historic nations are concerned. There is a parallel with the UK. In theory devolution could be overturned through simple legislation by a future government. This is highly unlikely to happen in practice, especially where Scotland is concerned.

The system of decentralisation in Spain has been described as one of ‘optional autonomy’, since it allows regions to move at a different pace towards further devolution. When the constitution was drawn up in 1978 some (mainly from the conservative right)

envisaged that autonomy would only be granted to the historic nations of Catalonia, the Basque Country and Galicia, in order to secure their support for the new Spanish state and out of a certain 'moral obligation' resulting from their suppression by (and resistance to) Franco. However, the provision in the constitution, that other regions could be formed through voluntary merger of provinces opened the doors for fourteen other 'Autonomous Communities' to be formed.

Once again there is a parallel with the UK, where some English regions, particularly the North East, have argued that decentralisation should be extended beyond the historic nations. The setting up of the 'Richard Commission' in Wales, which recommended giving the Welsh Assembly primary legislative powers similar to Scotland, can also be viewed as an example of one region trying to catch up with another.

The Spanish constitution does not envisage or prescribe an 'end product'. The open-ended nature of optional autonomy can be regarded as a source of instability: the constitution has the potential to be in permanent transition and never fully settled. This state of permanent transition has helped to encourage demands for complete independence, in particular from the Basque Country. The 'Ibarretxe-Plan', presented by the regional Prime Minister of the Basque Country in 2003, stops short of calling for secession, but does suggest moving towards a loose association of the Basque Country with Spain. The Aznar government immediately threatened to challenge this proposal in the constitutional court. The new socialist government, which came to power following the March 2004 elections, seems equally unlikely in practice to go along with the concept. Following its predecessor it confirmed that the nationalist Basque party *Herritarren Zerrenda*, seen as the successor of the banned *Herri Batasuna* party and close to the terrorist group ETA, should be banned from running in the European elections. This view was subsequently upheld by a ruling of the constitutional court. It may be worth noting the contrast with Scotland, where demands for independence have become less strident since the devolution settlement came into place.

The actual autonomy statutes specifying the exact powers of each region are not part of the constitution but negotiated on a bilateral basis between each region and the central government. This means that the level of autonomy can be amended through a renegotiation process. From a legal point of view this is relatively easy since it only requires simple legislation and not any constitutional change. In practice there has been a tendency for further devolution to be negotiated and granted when the central government has no absolute majority in the national parliament and needs support from a minority regional party, for example from Catalonia or the Basque Country. Regions have often sought to use this lever of power to press for further devolution. In the UK the legal basis for the devolution settlements can also be altered through simple legislation. Moreover, the centre

can simply impose change without the region's consent. The different voting system for the Westminster Parliament makes coalition governments less likely and thus restricts the capacity of the regions to exert similar 'back-door' pressure on central government.

The constitutional court plays a crucial role in settling disputes on regional autonomy. In the very early years of the new constitution the court rejected and stopped a set of 'harmonising' legislation, which would in effect have meant a significant centralisation. Such centralising tendencies are still apparent in Spain now, but they sometimes tend to get drowned by the loud voices of the strong historic regions. The Court has not, however, always backed the cause of the regions: it has also taken decisions and given rulings that strengthen the centre, as for example in the case of language legislation in the Basque Country. It seems likely that the UK too will need a similar institution to deal with future disputes on competences between the centre and the regions.

Germany, Italy, France and Belgium

Unlike Spain, Germany is a fully-fledged federation. It stands at the opposite end of the spectrum to that occupied by pre-devolution UK on a federal/central continuum. The principle of a federal state order is enshrined in the constitution, the Basic Law, and cannot be overturned even through the usual procedure for constitutional change. A response to Germany's history, this system was designed to make centralisation and streamlining impossible as well as creating various layers of democratic checks and balances. Although the post-war constitution signified a new start, it did in some respects build on German federal tradition of the 19th century, for example in the structure of the *Bundesrat*, Germany's second chamber.

Strong entrenchment of the federal principle leads to great stability in the political system – indeed some have criticised the German system for constitutional inertia. However, the exact balance between the centre and the regions is not finally settled by the German constitution, and the constitutional court – as in Spain – plays an important role in ruling and deciding in cases of dispute.

Italy's 1948 constitution made provisions for varying degrees of regional autonomy, creating an asymmetric system. For the first forty years these could be considered as little more than conceptualisations – theory rather than practice. The collapse of the political system at the beginning of the 1990s led to a great deal of interest in the regions as part of the basis for a 'new deal', but no real agreement as to the way forward. The centre left continued to espouse decentralisation as a possible way of curbing or limiting national government, whilst the Northern League – with some support from other elements of the right-wing coalition – claimed some kind of federalist legitimacy in arguing for a form of separatism. Both parties were, of course, also interested in

strengthening their own regional bases and general political influence. The Italian state is now more decentralised than hitherto but it is far from being a federation.

In France, establishing legitimacy for the regions has been a hardy perennial in the Fifth Republic, certainly ever since its first President – de Gaulle – generated and lost a referendum on the subject. There has been a certain amount of tinkering with the constitution to give regions an apparent status, but in essence France remains a centralised republic. Central government decides whether or not to implement devolution or to change current arrangements. The regions have no more than a limited input into the process of constitutional change: entrenchment is to all intents and purposes an alien concept. There are a variety of (competing) authorities at subnational level – communes, the bigger cities, departments and regions – but the last are still on balance the least important.

By way of contrast with both France and Italy, debate in Belgium was for a long period very far from being academic. The survival of the state came to depend on finding a resolution between competing demands of Flemish and French speakers of Flanders and Wallonia. The solution was a fully-fledged federation, albeit with a slightly unusual design. The positions of both the regions and the linguistic communities are now fully entrenched in the constitution.

The nature of regional authority

Formally the German *Länder* are actual states. They have their own constitutions, legislative parliaments, executives and judiciaries. Bavaria until recently even had a second chamber, the senate, composed of economic and social stakeholders. However, this was abolished in 1998 following a referendum. Whilst the actual powers of Spanish regions differ, all the regions have their own unicameral parliament, an executive headed by a President and a separate judiciary.

In both Germany and Spain, as in France and Italy, regional authorities are the result of direct elections, which are a major component of their democratic legitimacy. Methods of voting must be remembered in this context. Proportional systems are the norm throughout most of Europe. It has been suggested that members of regional assemblies can be rather cut off from their electorates as a result. The evidence is perhaps not conclusive, but there are implications for English regions. The British government's proposal is that some members of English regional assemblies will be elected in huge constituencies and others through a proportional top up system. In view of the ongoing debate about the involvement of stakeholders in the English regions, it is interesting to note that in the French regions they are involved through a statutory Economic and Social Council.

One final observation can be made about the emerging asymmetric system proposed for the English regions. Only three regions are holding referendums on the issue of direct elections at this stage; at least five will continue to have some machinery of governance without any structure of direct democratic accountability. Any legitimacy would be no more than a function of the legitimacy of the local authorities and stakeholders who between them appoint members of the unelected assemblies. Such a structure will hardly make a contribution towards bridging the democratic deficit.

Powers, competence and capacity

Regions throughout Europe have different means of acting and it may be useful to look at these on the basis of a three-fold analysis. Firstly, regions can have their own legislative powers, which are sometimes exclusive and sometimes shared with the centre. The way they are allocated in different European countries varies greatly. Secondly, a region's scope to act is often substantially affected by the level of influence and control it has over local government. Thirdly, the relationship between the regions and the centre establishes the influence a regional authority can exert on national policy-making. The rest of this section will look at the first two avenues for regional action: the allocation of competences and control and influence of regional authorities over local government. The complex issue of regional influence at national or federal level will be dealt with in a separate section.

Two of these avenues, specific regional competences and their influence on national policy-making, can be viewed on a continuum. There is a direct correlation between the scale and range of these and the extent to which the state can be classified as federal. France and Germany are at opposing ends of the continuum, whilst Italy and Spain are in between.

Whatever the precise distribution of powers, it is widely recognised that certain functions will always be reserved for the centre, including foreign policy and defence. Interestingly issues concerned with living standards and social security also fall into this category. It is part of the shared European political culture that there should – at least in principle – be some broad equality of living standards within any country. Economic and social policies to bring this about may be administered and implemented by the regions, but a degree of central government direction is inevitable. Indeed central government is bound to be involved in the redistribution process needed to secure equalisation. There are arguments within the UK over the fairness of the so-called 'Barnett formula' as the basis for central government funding, particularly where Scotland and Wales are concerned, but not over the requirement for central government to assume some responsibility. The German constitution actually goes further in formally enjoining broad equality in living standards as between regions.

Germany

The German constitution outlines areas of exclusive legislative competences for the centre and areas of shared competences, where either level of government may legislate, although with the underlying right of priority given to the centre. It does not explicitly list areas exclusive to the regions. Although the constitution gives a general power to legislate to the regions, the political reality is somewhat different. This results from a group of added words, 'unless this constitution provides otherwise': which it does in many cases. The constitution lists in detail the extensive range of areas of shared competence (twenty-six altogether), the areas where the centre can produce framework legislation and those where the centre has exclusive right to legislate (eleven). This does not leave many areas of exclusive competence for the regions. Culture and education are amongst them and particularly noticeable in that there are considerable variations in regional policies.

This blurred system of dividing powers has facilitated a degree of centralisation over the years. The regions can legislate in shared competence areas only if the centre has not yet done so, yet the latter has made extensive use of its legislative priority. This centralising tendency was furthered through extensive framework legislation (in such areas as university policy) as well as the system of 'joint tasks', where the centre works together with the regions to carry out specific tasks. The joint tasks were introduced during 1969 financial reforms at a time when many regions needed financial assistance. In effect the regions 'sold' some of their powers. The centre would give generous financial support to joint projects, inevitably giving it a powerful 'say'. In effect, economic disparities and the provisions for co-financing enabled the centre to increase its powers at the expense of the regions. In addition, where disputes arose – sometimes when regions tried to reclaim powers – the constitutional court often took the side of the centre, upholding the overriding constitutional principle of uniform living conditions.

Leaving aside their legislative powers the German regions have the major responsibility for implementing federal legislation. The word 'entanglement' has been used: the two levels need to co-operate very closely, through a plethora of intergovernmental committees both between the regions themselves and between the regions and the centre. The centre and the regions operate jointly in areas of shared competence and 'joint tasks', with the *Bundesrat* playing a key role in the legislative process. It is not for nothing that the German system is described as 'co-operative' federalism in contrast with the American model, where the competences of the two levels are clearly delineated and separated from each other.

Lessons from Germany

The German model suggests a need for powers and competences to be clearly defined and separated. Otherwise economic pressures working against some or all regions are likely to result in a centralising trend. The strong administrative intertwining and joint decision taking in so many policy areas has occasioned criticism that the system is both inefficient and lacks transparency and accountability. These problems are the major agenda for the 'Commission on the modernisation of federalism', which was established in October 2003 and is due to report by end of 2004 on possibilities for disentangling the powers and competences of the German regions and the centre.

So far the UK has followed very different and distinct paths in the respective arrangements for devolution to Scotland and Wales. The Scottish model offers a fairly clear division of power and competences. There have to date been some examples of Westminster/ Whitehall not liking the policy choices of the Scottish executive and legislature, but no major arguments regarding jurisdiction. By way of contrast, the arrangements for Welsh devolution are less clear-cut: even legal experts admit that there is frequent ambiguity as to which functions and powers can and should be exercised by the Welsh Assembly. This was one of the reasons for establishing the independent 'Richard Commission' in Wales with the remit of reviewing the powers of the Welsh Assembly. It came to the conclusion, and recommended, that Wales should have the same primary legislative powers as Scotland.

Spain

The Spanish constitution lists all state competences, as well as those which *may* be taken up by the regions. The bilateral autonomy statute negotiated between the central government and each region will determine the exact location of competences. The result of these different levels of autonomy is that Spain has a strongly asymmetric system. The historic regions and Andalusia have the highest degree of autonomy, for example with powers in the area of policing; however, they also differ between themselves. Equally there are differences between the remaining regions, although the last decade has seen further decentralisation. The distribution of powers remains an ongoing process and a source of potential instability. The change of government in the March elections has brought a new impetus to this development, raising hopes in many regions for further devolution. The new socialist government is seen to be more open to regional concerns than the previous conservative government under Aznar, leading to the assumption that in the near future some regions, if not even all, might want to renegotiate their autonomy statutes and amend them in favour of the regions.

Italy and France

Italian regions have exclusive competence for agriculture and tourism and shared competence with the state for health issues. The list of functions devolved to the French regions includes regional transport, housing strategy, tourism, certain environmental issues and school buildings. However, their role is essentially one of planning and not of implementation. This is seemingly paralleled by proposals to grant a variety of strategic powers to the English regions, often in spheres where implementation is a local responsibility. French experience, supported by some examples from Spain, offers a potentially significant lesson. More significant than the precise extent of the devolved powers is likely to be the ability of regional authorities to generate and develop political capacity. A lot will depend on the willingness of significant political figures to be involved at regional level.

Relations with local government

Where regional authorities acquire planning or strategic responsibilities, implementation tends to be a local authority role. This is accompanied in Germany, Italy and Spain (and also in Austria, Belgium and Finland) by some degree of political or legislative control. This is reinforced in Austria and Germany by the local authority funding system. In Italy there is a history of rivalry between local and regional authorities and the actual state of play is rather unclear. There is similar rivalry in France where the regions do not have any control – in theory or practice – over local authorities: indeed they are dependent on them for implementation. A variety of models have been adopted in the UK – devolved institutions in Northern Ireland and Scotland have substantial control and influence over local authorities. Although this is not formally replicated for Wales, the Assembly and Cabinet are in a position to exercise substantial influence over local authorities. By way of contrast the Greater London Authority and the London Mayor are formally rather circumscribed in their ability to influence, let alone control, the boroughs. What has made the difference is the ability of the first mayor to generate and develop political capacity. It seems likely that any devolved English regions will be in a similar position to London, but unlikely that they will be led by figures as charismatic as Ken Livingstone. Unless the planning and strategic role is given some teeth over those responsible for implementation – normally the local authorities – the success of regions will (as it is in France) be a function of their ability to rely on developing their political capacity.

Another potential problem arises by a kind of extrapolation from the German experience. Where regions have strategic powers and local authorities are responsible for implementation, there will be a need for administration intertwining and close co-operation, possibly through joint committees. Will this lead to similar accusations of

inefficiency and lack of transparency and accountability? If so, this will hardly help to tackle the democratic deficit! The argument has been made that the English regions should be given executive powers, rather than just strategic responsibilities, so that voters should see the added value of these institutions, based on democratic legitimacy.

Bringing about constitutional change - process or event?

The cliché – process rather than event – has characterised each stage of the devolution debate in the UK since 1997. Any search for relevant parallels in the EU should exclude the long established federations – Austria and Germany. However, some fascinating comparisons can be made between the constitutional changes establishing a federation in Belgium and the Northern Ireland settlement.

Belgium and Northern Ireland

Belgium and Northern Ireland are divided into mutually suspicious communities, respectively along linguistic and religious lines. There are two major differences. In Belgium there is some co-incidence between communities and regions; by way of contrast, Catholics and Protestants live in close proximity in many parts of Northern Ireland. Second, the vast majority of both Flemish and Walloon communities identify with Belgium. Neither community has demonstrated any desire to join with linguistic neighbours (Netherlands or France). By way of contrast most of the Catholic/ Nationalist community in Northern Ireland would clearly like to be part of the Irish Republic, whilst the Protestant/ Loyalist community looks to the rest of the United Kingdom. There is a sense in which devolution is a kind of second best for both communities.

It is possible to discern some rather vague federal principles incorporated into the Northern Ireland settlement, but these are largely external and concern linkages with other parts of the British Isles. The internal Northern Ireland settlement has seemingly been influenced by 'consociationalism' rather than federalism. Devolution is to a single Northern Ireland authority which can only operate through cross-community agreement and with cross-community representation, rather than on the basis of straight majority. There are some similarities with the traditional Austrian model, which revolved around a 'partnership of necessity' between the Conservative and Socialist parties. Ultimately, the unwritten Austrian arrangements have fallen apart and the two blocks are now competitors rather than partners within the political process. In Northern Ireland consociationalism is legally prescribed: an ongoing working partnership between parties representing a majority in each of the two communities is a necessary condition for the system to operate. In the absence of this, the devolved system simply does not work. As a result the Northern Ireland authorities have spent long periods – including the present – in a state of suspension.

Federal ideas and practical European experience could make a significant contribution to any revision of the Northern Ireland settlement. Devolution of significant powers and competence along Belgian lines directly to each of the two communities would recognise the reality of separateness and might mute the difficulties inherent in the consociational approach.

Devolution processes in France, Italy, Spain and the UK

Apart from the special case of Northern Ireland, it is reasonable to compare and contrast the UK devolution process with what has happened in France, Italy and Spain, but not Germany. Any attempt to compare UK devolution with the process of creating the German federal system suffers from the obvious flaw that the German system emerged from specific and very different historical factors. In effect it was created from scratch out of a political vacuum. This holistic approach to constitutional reform represents the opposite to the UK's 'piecemeal' approach.

In France regional devolution has been imposed – but in this case from central government and largely in the absence of any popular demand. Testing of opinion has been on a national basis and there has been no attempt at legitimisation through regional referendums. Indeed a period of time elapsed before direct elections to the regional institutions. The central state with the prefects as its agents, the departments and communes – including the large cities – all have a long history. In a sense they are the established parts of the 'real' constitution and reflect the ethos of the indivisible republic. The regions may have gained in popular support but they remain a kind of 'tack-on' to those pre-existing tiers of government and administration.

As with Germany, the Spanish system was founded with the aim of consolidating a democratic political system in the wake of a collapsed dictatorship. However, in this case there are interesting parallels with, and potential lessons for, the UK. Approval of the new constitution was an 'event' paving the way for the 'process' of regionalisation. Initially only the historic regions and Andalusia (see below) were granted autonomy status, but within a relatively short period there were 17 autonomous communities – largely set up through a bottom-up process. This dynamic resulted from following the example set by the historic regions and also by making use of a constitutional provision allowing 'bordering provinces with common historical, cultural and economic characteristics' to merge. The 'new' Spain has a highly federal system, but – in contrast to Germany – it is not formally a federation.

Several aspects of the Spanish experience have particular resonance for the UK. In Andalusia a 'yes' majority in an initial referendum was turned into a 'no' vote by application of special rules. In a second referendum, with the voting rules requiring

solely a simple majority, there was a large majority in favour. The party system and the frequent need for coalitions have also been important factors. Regional parties can trade support against further measures of devolution. There are interesting parallels with Scotland, although in this case there is a sense in which the UK 'got there first'. The Scottish National Party withdrew support for the Labour government after the first referendum on devolution in the mid 1970s. As with the first Andalusia referendum, the rules as laid down by central government turned a 'yes' majority into a 'no' vote. Ultimately this fuelled the case for devolution. At an early stage in the process, the new Labour government gave Scotland a fresh opportunity to vote for devolution under normal majority rules. Again, as in the Andalusian case, there was a very substantial majority. Unlike in the Andalusian case, twenty years had elapsed: a necessary prelude or the consequence of the SNP's political tactics? In any event there is an obvious lesson that the imposition of voting requirements detracting from the principle of a straight majority are likely to be self-defeating.

'Me-tooism'

It is also worth recognising the extent to which 'me-tooism' has played a role in Spain. As a process it seems to work in only one direction where devolution is concerned. There are no examples from Spain or any other European country of popular demand to reverse the process. Perhaps 'me-tooism' should be renamed as 'catch up'! This has implications for the upcoming referendums in the three English northern regions. In the event of any, let alone all three determining to establish directly elected regional assemblies, it is likely that other regions will in due course demand the same. It also poses a considerable challenge for political parties opposed to devolution.

There has been some 'me-tooism' also in Italy but considerably less than in Spain. Debate over the status of regions in Italy has been largely a function of the interplay of party politics, particularly since the collapse of the post-war political system at the end of the 1980s. The constitution differentiated 'special' from 'ordinary' regions. In fact the former were all relatively remote or peripheral – two islands and three small regions bordering on other countries to the north. The special regions have in practice made no use of the extra legislative powers given to them, whilst only South Tyrol demonstrated any intention of forging some kind of clear or separate identity. During the long years of domination by the Christian Democrats, the left showed some interest in the regional agenda – as a product of its quest for an alternative power base. On occasions, the Northern League has seemed to espouse federalism. In practice it is simply a loud and clear voice for the northern regions, arguing for what would amount to almost complete independence. Italy remains an example of decentralisation rather than federalism.

The 'me-tooism' characteristic of Spain, and to a lesser extent of Italy, has already emerged in the UK. Members of the Welsh Assembly from all parties have expressed concern over both the extent of devolved powers and the way in which they have been classified. Some felt that Welsh devolution should parallel the more extensive arrangements enjoyed by Scotland. This was the background to the appointment by the Assembly of the 'Richard Commission' to consider *inter alia* its delegated powers and its role in influencing UK legislation. The case for devolution to the English regions has also been fuelled by the arrangements for London as well as for Scotland and Wales, and this might in the future be reinforced if one or more Northern regions go ahead with elected assemblies.

Symmetry, asymmetry and the 'West Lothian' question

European regions differ widely in population and geographic size. History and economic realities contribute largely to these disparities. Based on grouping of departments, the French regional map is relatively uniform in geographic terms, whilst its population disparity - a ratio of 1:15 (smallest to largest) is less than in Germany (1:24), Spain (1:27) and Italy (1:50). UK population disparities are considerably less than in France.

Although there is an enormous difference between the powers and competences of the German *Länder* and those of the French regions, in both systems all the regions have the same powers. Italy and Spain are different. In Italy there was an initial difference between special and ordinary regions, but in practice this has had little significance. The Northern League is clearly intent on introducing a new asymmetry, although it is in reality largely indifferent to arrangements for the rest of Italy. However, this is still in the realm of political controversy. The Spanish model has a reputation for asymmetry, but it needs to be recognised that leaving aside the more advanced arrangements for the Basque country, Catalonia, Galicia and Andalusia, there is a tendency for increasing symmetry between the other regions.

One issue flagged in the UK ever since the mid 1970s is the so-called 'West Lothian' question. It concerns the future role of MPs from parts of the UK with devolved authorities. Once decision-making powers have been devolved, is it legitimate for those MPs to vote when policies are being determined for the rest of the UK in these devolved areas? This may be somewhat of a political football, to be cited at convenience by political parties. What is interesting is that there seems to be no evidence that the issue has ever surfaced in any other European country.

Financial aspects of regional government

The devolution settlements in the UK have been criticised for not providing sufficient financial autonomy. Although the degree of financial autonomy is not just a simple reflection of the political system (there are unitary states with highly decentralised financial arrangements and federal states where the centre keeps rather tight financial control) money is an important factor when looking at the overall capacity of regional government and its relation with the centre. When looking at principles of good governance there are arguments both in favour (local choice, closer accountability) and against (complexity leading to lack of transparency) financial decentralisation.

The four factors determining financial autonomy are revenue, expenditure, intergovernmental transfers and borrowing. Revenue can take the form of own tax-raising powers; taxes shared with central government; and central government allocations, either in the form of block grants or ring-fenced grants for specific tasks or purposes. However, more important may be spending autonomy, as this is how a region can enact its policy choices. There is ongoing debate about the impact on 'autonomy' of 'fiscal imbalance' (spending not being matched by funds raised).

Revenue

In Germany each level of government – central, regional and local – has exclusive right to certain taxes, such as petrol and tobacco tax for the centre, inheritance tax and stamp duty for the regions and business rates for the local level. The largest tax revenues – income tax, vat and corporation tax, which make up around 70 per cent of total tax income – are shared in fixed proportions. The centre sets tax rates, but the regions participate in fiscal policy-making through the *Bundesrat*, whose consent is required for tax legislation. However, it is possible to regard income from shared taxes as similar in kind to a block grant.

There are differences between the various Spanish regions. For historic reasons, the Basque Country and Navarra enjoy a special financial arrangement providing them with a large degree of fiscal autonomy. They have full responsibility for their fiscal policies (raising taxes and setting rates) and pay an agreed percentage to the national government for services provided by the centre. In 1996 and 2001 financial reforms led to greater financial decentralisation for the other 15 regions, together with devolution of further powers such as health and education. Those regions now receive 'ceded taxes', where a fixed percentage of income from certain taxes raised in a region is returned to it, such as 15 per cent of personal income tax collected in their territory. Some regions additionally have the right to modify certain tax credits and rates. Evidence seems to suggest however that regions prefer using the tool of tax credits to that of tax

powers. Ceded taxes and central government grants account for more than 80 per cent of total revenue.

Italy has also introduced various tax reforms since the early 1990s, giving the regions greater fiscal powers and corresponding to the decentralisation of competences such as health and training. Regions can levy a personal income tax and business taxes are also devolved. Although recent reforms gave greater fiscal powers to French regions, autonomy is still very limited.

There has been little fiscal decentralisation in the UK. Scotland has so far shown no interest in levying a 'tartan tax' (the power to vary income tax by up to 3 per cent), whilst the 'Richard Commission' in Wales put little emphasis on the need for tax-raising powers. Perhaps they do not want to incur the unpopularity associated with tax collecting! Revenue for future elected assemblies in England will be mainly in the form of central government grants, although there will be the possibility of a small precept on the council tax. The latter is the only source of revenue under the theoretical control of local government in the UK. It only covers a small proportion of expenditure and central government tends to intervene if there are significant increases.

Government transfers

Equity and equalisation mechanisms play an important role in the financial arrangements of the countries under consideration. This sets European countries apart from the more competitive US financial and fiscal model. The UK sits more with European tradition and values, practising a system of equalisation through transfers, based on the so-called 'Barnett formula'. Different from most European countries this formula, whilst taking population into account, is not needs-based: tax capacity is far less important than historical tradition and political expediency. Only Italy has a similar arrangement of politically and historically based transfers. However, reforms introduced in 2000 will gradually phase in a new, more needs based system.

There is some evidence from Germany and Italy that equalisation schemes aimed at promoting equality and uniformity of living conditions can be the occasion for 'irresponsible' budgetary regimes. Regions may over-spend, knowing that central government will bail them out and there is no real incentive to achieve budgetary balance. In the UK, English northern regions feel particularly disadvantaged by the 'Barnett formula': devolution is likely to lead to pressure for a review, potentially reinforced by widespread distaste for what is termed a 'post-code lottery'. A review of the formula may however increase tension between the regions when the scale of redistribution between richer and poorer regions becomes more apparent – a phenomenon which can be observed in Germany.

Borrowing

Although the UK runs one of the stricter subnational borrowing regimes, other European countries also impose limitations. The Maastricht rule relating to public debt (a maximum of 3 per cent of GDP) is one common factor pushing European central governments towards financial restraint. German regions can only borrow for investment purposes and in proportion to their financial capacity. France allows more latitude for borrowing on capital expenditure but prohibits borrowing to cover running costs. Austria and Italy have agreed a kind of 'internal Stability and Growth Pact'.

Expenditure

In a technical sense, expenditure may rank equally with revenue as a test of financial autonomy. Assuming that the revenue is available – from whatever source – are subnational or devolved authorities free to spend? This is a complex area for analysis. Regions cannot normally spend money on matters outside their delegated powers and competence. Within those areas, broadly defined, regions normally have wide discretion. German regions are, in most policy areas, the administrative arm of central government and they are responsible for almost half of public expenditure. By way of contrast the direct powers delegated to French regions are limited – as are their revenue sources. Regions only undertake some 2 per cent of public expenditure. Spain and Italy fall somewhere between these two opposites.

Where local government is concerned the traditional British approach has been different. Central government operated a variety of control mechanisms on expenditure even when powers were delegated and revenue available. This has been changed to some extent in recent years. Scotland and Wales enjoy wide autonomy in the spending of their block grant in devolved policy areas such as health and education, where competences have been divided clearly between the centre and the devolved institutions. It seems likely that English regions will have a general power to spend in carrying out their allotted roles, but that pressures will arise on the revenue side.

Regional influences over national or federal policy-making

The two major channels through which regions can influence policy and law-making at central government level are the second legislative chamber and the party system. As a general rule European second chambers are either appointed subnationally or directly elected. In two of the formal federations – Germany and Austria – the second chambers represent the federal partners. In Spain (with a federal type system) there is limited regional representation; in France there are, of course, no federal partners. By way of contrast the normal route to appointment in the second chambers of Belgium

and Italy is direct election, although the former gives representation also to federal partners.

The German *Bundesrat* offers a very strong and institutionalised channel through which the regions are able to influence federal policy-making. Membership is determined for each *Land* by its government and varies from two to six representatives according to population. Such a system clearly gives additional weight to the smaller *Länder*. Federal legislation, which affects the *Länder* – for example because it concerns a shared competence or it has financial implications – either needs approval by the *Bundesrat* or can be vetoed by it. In practice around 60 per cent of federal legislation is determined in this way: policy-making can become very complex. The German model has been described as ‘executive federalism’, since it is representatives of the regional governments who sit in the second chamber. This has been criticised for giving too much power to the executive branch, sidelining regional parliaments and hindering scrutiny and democratic accountability.

By way of contrast, members of the Austrian *Bundesrat* are elected by *Land* parliaments in proportion to party strength. As in Germany, but to a smaller extent, the less well populated *Länder* are relatively over-represented. The major difference is that in the Austrian model the *Bundesrat* has much less power.

Arrangements in the Belgian federation reflect the structural difference that there is devolution to both regions and communities. Just over half the members of the second chamber are elected. Others are appointed in equal numbers by the Flemish and French communities and some are co-opted.

Although the Spanish Senate provides for regional representation, its *de facto* link to the regions is hardly apparent. There is a mixture of provincial and regional delegates, with the former being directly elected on a provincial basis (apart from the island regions), and the latter appointed by regional parliaments rather than directly elected. The Senate monitors policy-making in the parliament and can review legislation. However, it has only a very limited role in law-making. These two defects – no strong role for regional representation and its limited role in the policy-making process – are the reason why there has been a long-standing debate in Spain on reform of the Senate.

All but a few members of the Italian second chamber are directly elected. In a sense there is, therefore, regional representation, but the prime basis for identification is the party label. The second chamber enjoys a wide-ranging role, in theory at least fulfilling the same functions as the first chamber. The French second chamber is also elected but through an electoral college system. Constituencies are made up of departmental ‘notables’. If the other organs of central government embody the

indivisible republic, the senate can be said to represent the rest of real France – to which, as indicated earlier, the regions are little more than an ‘add on’.

It is often supposed that what sets current UK practice apart is simply the absence of any direct elections to its second chamber. The above shows that this is not really the case. In all the examples cited most members are either appointed on a regional basis or elected. The House of Lords remains unique – part hereditary and part appointed for life by and through central government. As currently constituted it has no legitimacy. The interrupted process of reform may still offer an opportunity to introduce a regional dimension. This could both boost the devolution process and help to legitimise the House of Lords (perhaps with a change of name!).

The other major route for regional influence at national or federal level is through political parties. All the Belgian parties are based on communities, although most can be ‘paired’ into ideological ‘families’. From a national perspective, the two classic examples of federation – Austria and Germany – might seem only to have national parties. The position in Germany is in fact slightly more complex. The Bavarian CSU is a separate and distinct party, but it is allied to the CDU which does not operate in that *Land*. It is, of course, quite normal for potentially powerful regional interests to operate as lobbies within political parties. Difficult to measure and lacking transparency, this hardly helps to promote democratic legitimacy. Both Spain and the UK have regional parties operating as rivals to the national parties. If they happen to hold the balance in the national legislature, they are also potential parliamentary partners.

Conclusions and lessons for the UK

Devolution in the UK has played some part in the opening up of a series of debates about modernisation of the political system, including reform of the House of Lords, abolition of the post of Lord Chancellor and the possible creation of a ‘supreme court’. Clearly, one function of the latter would be to adjudicate disagreements over competence issues between the central and the devolved authorities.

The variety of European experiences demonstrates the individuality of different national patterns of federalisation, regionalisation and decentralisation. Constitutional and institutional structures are developed within specific national political cultures. Nonetheless those political cultures are extraneously influenced over time: ideas do travel. Indeed the British government’s modernisation programme – of which devolution is a part – demonstrates the impact of ‘extraneous’ idea on our indigenous political culture. An obvious example, *prima facie* more relevant to local government than to devolution, was the espousal of directly elected mayors (albeit based in part on a misreading of continental experience).

Clearly, there is no single over-arching explanation for the process of regionalisation. However, there are common factors such as the 'democratic deficit' and European integration. A regional interlocutor to engage the EU on issues of regional policy offers clear advantages. The contribution to be made by regional authorities towards bridging the so-called 'democratic deficit' is potentially more problematic: the 'jury is still out'. We have noted that there is a tendency for the 'heart to grow fonder' once new authorities are established. Where they build on an already established sense of identity – as in Bavaria, Catalonia and Scotland – the potential for bridging the divide between the governed and government is likely to be greater.

Our study of financial arrangements for regional government in other European countries may have helped to dispel a myth. There is a widespread assumption throughout British local government that it differs from the European pattern in that it lacks independent financial resources. The position is in fact much more complicated. No subnational authority anywhere in Europe is completely autonomous whatever the source of its finance. Local taxation, fixed shares of national taxes, direct grants from central government are alternative means of financing subnational authorities: but the financial resource itself is always limited. The key issues for the subnational authorities are how much is available and whether or not they are free to determine their own priorities when it comes to spending. In this respect the present UK government has to some extent relaxed the traditional tight control exercised by the Treasury where local government is concerned. The somewhat vague concept of a 'right to spend to promote the general well-being' has been recognised by this government and is contained within the devolved arrangements outside England. Its extension to the English regions would make an important contribution to their political capacity and with it their ability to help bridge the democratic deficit.

European practice also reflects interestingly a central aspect of the current British political debate. This aspect is the 'post-code lottery' in service provision. It is interesting in this respect to note that whilst the German *Länder* have infinitely greater competence and wield far more political capacity than regions in France, Italy and Spain, the constitution of the Federal Republic imposes an obligation to maintain equal social standards. This explains the equalisation arrangement to transfer financial resources from the better off to the less well off *Länder*. In itself a reminder of the limitations of autonomy, the system has been criticised for allegedly inhibiting financial responsibility on the part of the *Länder*.

We would want to draw attention to a number of specific lessons drawn from other European experience and which seem particularly relevant for the ongoing process in the UK.

Lessons

- 1) An open-ended process is likely to generate demands for further devolution. Central government needs to anticipate ongoing negotiations with the regions.
- 2) Devolved institutions can be successful even if regional boundaries are artificial.
- 3) Clear division of competences between central and regional authorities helps promote decentralisation. An independent court should settle jurisdictional issues.
- 4) Political parties need to be aware that there are no European examples of public support for reversing the devolution process.
- 5) Any special rules detracting from decision by straightforward majority in referendums are likely to be self-defeating.
- 6) Unelected regional assemblies make no contribution towards bridging the democratic deficit. Members elected by proportional representation to small assemblies may become rather remote.
- 7) Since most funding for the English regions will be through government grants, some general competence to spend will be needed to establish credibility and enlarge political capacity of the new institutions.
- 8) If English regional authorities are to be effective in their strategic and planning role, they will need some formal control or influence over local authorities.
- 9) Regional election could contribute towards the legitimacy of both a reformed House of Lords and the devolved institutions.

Finally, we do not consider there to be any obvious single model to be followed or adopted by the UK. Experiences elsewhere in Europe offer a rich variety of ideas with potential relevance to the UK. Structures are important: attention will always focus on formal delegations of powers. However, it is political capacity which will ultimately determine the success of devolved authorities. This will in large part be determined by belief, loyalty, expectations of those living in the regions; the willingness of stakeholders to engage with the new institutions; and commitment by high profile individuals to take on regional leadership roles.

Further reading

This paper is based on a wide range of sources. These include primary documentation – constitutions, government reports etc – and also academic literature. Leading newspapers and news magazines often gave useful coverage, and we made specific use of the series ‘Federations’ published by the Forum of Federations. Below is a selection of texts we consider particularly useful for further reading. Finally, we would like to give a special thanks to Professor Anna Cento Bull (University of Bath), Dr Erin Delaney and Dr Anna Vergés Bausili (both of the Federal Trust) for their help and comments.

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