

**THE FEDERAL TRUST**

*for education & research*

enlightening the debate on good governance

**Devolution and regional administration:  
A federal UK in embryo?**

**ANDREW BLICK**



November 2009

## 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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**A Federal Scotland  
Within a Federal UK**

Andrew Blick



*Enlightening the Debate on Good Governance*

## Note on the author

Dr Andrew Blick obtained a degree in Government and History from the London School of Economics and an MA in Contemporary British History at Queen Mary, University of London, where he was subsequently awarded his PhD. During 1999, he was an administrative assistant at 10 Downing Street, and he has later worked as a political researcher at the House of Commons; then as a research consultant at Democratic Audit, University of Essex. In September 2008 he joined the Federal Trust to work on the 'Federal Britain' project.

He is the author of *How To Go To War: A Handbook for Democratic Leaders* (Politico's, 2005) and *People who Live in the Dark* (Politico's, 2004), a history of the special adviser in British politics. He is writing with Prof. George Jones a book on the office of Prime Minister. In 2008 he was asked to produce the central position paper for a British Academy seminar on Gordon Brown's constitutional reform programme.

# **Devolution and regional administration: A federal UK in embryo?**

## **Introduction**

This paper is the second to be produced as part of Federal Trust's 'Federal UK' programme. The first, 'A Federal Scotland Within a Federal UK' considered the position of Scotland within the Union and its implications for the prospects of the establishment of a federal UK. In this pamphlet, Andrew Blick describes the arrangements for devolved governance and regional administration that have been established in Scotland, Wales, Northern Ireland, London and the English regions since Labour took office in 1997. He then discusses how far these developments can be seen as signifying progress towards a federal settlement for the UK as a whole. The third publication will consider proposals for the structure of a federal UK and what politically realistic steps could be taken towards achieving this outcome. In particular it will address the issue of how England, which is often seen as too large to form a single part of a federal UK, can be integrated into such an arrangement, given the apparent difficulty of establishing the English regions as autonomous political entities.

**Brendan Donnelly**  
Director, Federal Trust for Education and Research  
November 2009

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## Executive summary

1. In the period since Labour took office in 1997, the pursuit of regional and devolution policies by the Labour government has seen significant changes to the administrative and political structure of the UK. In particular devolved governance has been introduced to London, Northern Ireland, Scotland and Wales; and Regional Development Agencies have been established in the English regions. While change has occurred throughout the UK it has not taken place in a uniform, even fashion.

2. Scotland and Wales have stronger traditions as political communities than Northern Ireland, which dates as an administrative construct only to the 1920s. As administrative constructs the English regions outside London are more recent still.

3. The most striking contrast which emerges from a comparison of arrangements for sub-UK level governance and administration is the absence of devolution of political power for the English regions other than London. England has been left behind.

4. In Greater London the head of the executive, the Mayor, is directly elected and separate from the assembly, which is a relatively weak body. In Wales, Scotland and Northern Ireland, the executive is dependent upon the elected chamber to remain in power and for the passing of legislative measures.

5. All the devolution settlements involve the use of more or less proportional voting systems, unlike the UK Parliament.

6. Opinion poll findings for Scotland and Wales indicate growing popular support for devolution since its inception, a trend which is notably pronounced for Wales. This shift in opinion suggests that the establishment of political institutions can in some circumstances help to create or enhance political identity, and that the success of such a project is not purely dependent upon pre-existing enthusiasm, but can generate its own momentum.

7. It is hard to imagine devolution in Scotland, Wales and London being significantly scaled back or abolished without referendums taking place. Nor is it easy to imagine that such referendums could be won by the opponents of devolution. Devolved institutions in Northern Ireland have been suspended in the past. The possibility of similar measures being taken in future, or even of the abandonment of arrangements for devolved governance, is entirely contingent upon the course of the Northern Ireland peace process. Arrangements for regional administration in the eight English regions do not enjoy the de facto safety from intervention from the centre that devolution outside Northern Ireland does.

8. The financing of all devolution settlements in the UK (aside from the devolution of responsibility for local government finance) has been based around formulae determined at the centre and funded out of a single pot of tax revenue raised across the whole of the UK. The London Mayor, it should be noted, is an exception in enjoying more direct access to taxes and funding from charges. The Calman Commission proposals on finance, if put into practice, would alter the constitutional position in Scotland significantly, by reducing the block grant and devolving new tax-raising powers.

9. There is a clear tendency towards the extension of devolved powers over time, though all such extensions are subject to cooperation at UK level. Perhaps the most dramatic extension of devolution was the one provided for by the Government of Wales Act 2006, which provided the Assembly with the ability to legislate and opened up the possibility for new powers to be added over time, and for a further expansion in its scope of activity.

10. Devolution has led to the emergence of political dynamics and power balances different from those apparent at UK level, and notable policy diversity.

11. It could be argued that a barrier to the appearance of anything approaching a federal UK is the heterogeneity of existing devolution settlements, for instance whether their devolved powers are defined negatively or positively. But while distinctions exist, they are outweighed in importance by the similarities.

12. There is no one set pattern to which all federal constitutions must conform. There is on the other hand a cluster of characteristics typically associated with such constitutions. These characteristics might include a codified constitution delineating the rights and responsibilities of each tier of governance; a UK Bill of Rights; a UK Supreme Court to interpret and enforce the constitution and Bill of Rights; and mechanisms for coordination between the different tiers of governance, possibly including an upper chamber in the UK Parliament giving representation to the different UK territories. There are nascent elements of all these characteristics to be discerned in the present constitutional structure of the United Kingdom.

## Devolution and regional administration: A federal UK in embryo?

### Part One: Devolution and regional administration

In the period since Labour took office in 1997, the pursuit of regional and devolution policies by the Labour government has seen significant changes to the administrative and political structure of the UK. In particular devolved governance has been introduced to London, Northern Ireland, Scotland and Wales; and Regional Development Agencies have been established in the English regions. While change has occurred throughout the UK it has not taken place in a uniform, even fashion. As the final report of the Calman Commission on Scottish Devolution recently put it:

The United Kingdom is an asymmetrical Union. Not only are the four nations<sup>1</sup> very different in size, but devolution in Wales and Northern Ireland is different from devolution in Scotland, and there is no devolution for England.

Moreover the position is not static: each territory of the UK is continuing along its own distinctive path. Another recent report, by the House of Commons Justice Committee, noted that:

the way the United Kingdom is governed has changed and will continue to change because its component parts are now governed by different administrations and in ways which are not uniform.

The following report sets out the detail of each settlement for Scotland, Wales, Northern

Ireland, London and the English regions, in order to convey the spectrum of development that has occurred. It then considers the themes that arise from a consideration of each set of arrangements and discusses the extent to which, when considered in total, they can reasonably be considered to amount to development in a federal direction for the UK as a whole.

## *Scotland*

A referendum was held in Scotland in September 1997 producing a majority in favour of the creation of a Scottish Parliament with tax varying powers. Voters were asked two questions: whether they agreed with a Scottish Parliament; and whether they agreed with a Scottish Parliament with tax raising powers. On a 60.4 per cent turnout, 74 per cent voted 'yes' to the Parliament; and 63.5 'yes' to a Parliament with tax-raising powers.

The first elections to the Scottish Parliament took place in May 1999; the first meeting of the Parliament was held later in the same month. The Parliament was officially opened and took up its powers in July 1999. Subsequently there have been elections to the Scottish Parliament in 2003 and 2007.

The Scotland Act 1998 is the basis for Scottish Devolution. Under the terms of this Act the Scottish Parliament can pass laws affecting Scotland on a range of domestic issues and can raise or lower the basic rate of income tax by up to three pence in the pound.

Under the Scotland Act 1998, the Scottish Parliament can make primary and secondary legislation in areas not reserved to Westminster (specified in schedule 5 of the Act) or protected from modification (also specified in schedule 5). In other words the devolved powers are defined negatively. The list of reserved matters is lengthy and complex. They include the constitution; defence and national security; the fiscal, economic and monetary system; trade and industry; social security; and immigration and nationality.

Devolved subjects are those which do not fall under the reserved categories. They include health; education and training; local government; housing; and most aspects of criminal and civil law.

In some areas legislative competence differs slightly from the executive powers devolved to the new administrations, as the Executive (or 'Government' as it has now named itself) can be granted additional powers – subject to the agreement of the Westminster and Scottish parliaments – where the Parliament has no legislative competence.

The Calman Commission, which comprised representatives of the main pro-Union parties, recently proposed changes to the devolved powers. It argued that responsibilities including for elections to the Scottish Parliament, for some aspects of public health and safety, and deprived areas should be shifted to Scotland. Most significantly it proposed a decentralisation of fiscal responsibility (see Appendix Three). This shift, if implemented, would mean amongst other changes that the block grant made available to devolved government in Scotland was reduced, while at the same time Scotland was given a substantial role in determining the rate of income tax. Calman called for certain new powers simultaneously to be reserved at UK level, for such reasons as clarity and the preservation of a single economic market in the UK. These powers included the regulation of charities, food labelling, regulation of all health professionals, and the insolvency service.



There is a First Minister and a Deputy First Minister. The Scottish Executive or 'Government' has 18 members. It is at present a Scottish National Party minority administration. In 2008 the Scottish Parliament established the Scottish Commission for Human Rights.

There are 129 Members of the Scottish Parliament (MSPs), elected under the Additional Member System (AMS), with 73 first past the post and 56 top ups.

## **Wales**

The referendum held in Wales in September 1997 produced a majority in favour of the creation of a National Assembly for Wales. On a 50.1 per cent turnout, 50.3 voted 'yes'.

The first elections to the Assembly took place in May 1999. The first meeting of the Assembly took place and the Assembly was opened later in the same month. Subsequently there have been elections to the Assembly in 2003 and 2007.

The Government of Wales Act 1998 established the National Assembly for Wales. Initially the Assembly had transferred to it only executive, rather than legislative competence. It possessed powers that had previously been conferred upon secretaries of state under statute; not the ability to introduce primary legislation. The Assembly and Assembly Government were a single corporate body exercising these executive powers.

In July 2002, the Welsh Assembly Government established an independent commission chaired by Lord Richard. The Richard Commission reported in March 2004, with recommendations including that the National Assembly should have powers to legislate in certain areas. These recommendations were partially put into effect by the Government of Wales Act 2006, which provided for a formal legal separation between the National Assembly for Wales and the Welsh Assembly Government. The Welsh Assembly Government is now the executive comprising the First Minister, Welsh Ministers, Deputy Welsh Ministers and the Counsel General. This separation between the legislature and the executive took effect in May 2007.

Under the Government of Wales Act 2006 the Assembly is able to make laws by utilising what is known as its 'legislative competence'. Its powers are defined positively. Legislative competence is defined using two categories: 'fields' and 'matters'. A field is a broad subject area; while a matter is a specific defined policy area within a field. The fields are not in themselves operative until matters are specified within them. Within its areas of legislative competence, the Assembly can make laws, known as 'Measures', which have a similar effect to an Act of Parliament. Members of the executive can have further powers transferred to them by the UK government.

The current fields include agriculture, fisheries, forestry and rural development; economic development; education and training; health and health services; housing; and local government. Within each of the fields, specific matters are listed, in relation to which the Assembly can introduce Measures.

The Government of Wales Act 2006 provides a mechanism for the Assembly to acquire, on a case-by-case basis, more powers to make its own laws, subject to agreement between Cardiff and London. The adding of a matter requires either a new Act of Parliament or a

Legislative Competence Order, subject to approval both by the Assembly and the UK Parliament. Policy matters added include additional learning needs and vulnerable children. There has been a tendency for a backlog to build up of matters awaiting clearance from London. Of 14 Legislative Competence Orders introduced since May 2007, only 3 have completed their progress, partly because of the length of time it can take to scrutinise and approve them at UK level.

The 2006 Act provides as well for the extension of the power of the Assembly, subject to a referendum, to issue 'Acts' across broad subject areas, without the need for matters to be specified within them, with some specific exemptions. The holding of the referendum is subject to two thirds of members of the Assembly supporting it, along with both Houses of Parliament. The current Labour/Plaid Cymru Government in Cardiff is committed to holding a referendum on full law-making powers by 2011. The All Wales Convention, chaired by Sir Emyr Jones Parry, is likely to produce a report on the subject by the end of 2009.

The Welsh Assembly Government has 15 members including a First Minister and a Deputy First Minister. It is a Labour/Plaid Cymru coalition.

There are 60 Members of the National Assembly for Wales (AMs), elected under AMS, 40 first past the post, 20 top ups. The Richard Commission criticised this electoral system in particular on the grounds that it creates two classes of AMs with overlapping constituencies, and supported the introduction of Single Transferable Vote (STV) system. The UK government did not accept this recommendation, though Plaid Cymru continues to support it.

In 2000 the Care Standards Act 2000 created the post of Children's Commissioner for Wales, whose remit was broadened by the Children's Commissioner for Wales Act 2001. This was the first post of its kind in the UK. The Commissioner is an independent champion for children and young people in Wales. Performing a similar role for older people, in January 2008 Welsh ministers appointed the first Commissioner for Older People in Wales, established by the Commissioner for Older People (Wales) Act 2006.

### ***Northern Ireland***

The Northern Ireland Assembly was established following the signing of the Belfast (or 'Good Friday') Agreement in April 1998. The Agreement was the product of extended talks between the political parties in Northern Ireland and the governments of the United Kingdom and Ireland. The Agreement was endorsed by a referendum held in May 1998, when on an 81.1 per cent turnout, 71.1 per cent of the Northern Ireland electorate voted 'Yes' (a referendum was held in the Republic of Ireland as well, for which the respective figures were 55.6 and 94.4).

The first elections to the Northern Ireland Assembly were held in June 1998 and the Northern Ireland Assembly first met in 'shadow' form, without its powers, in July 1998. It took on its powers and met formally for the first time in December 1999.

Since first becoming operative, the Assembly has on a number of occasions been suspended, following breakdowns in peace process negotiations, with the longest return of direct rule

running from October 2002 to May 2007. In the interim an election was held in November 2003; the St Andrews agreement was reached in October 2006 (given legal expression by the Northern Ireland Act 2006); and a further election was held in March 2007.

The Northern Ireland Act 1998 defined the institutions of government in Northern Ireland, and mechanisms for collaboration between the governments of the UK, Northern Ireland and the Republic of Ireland.

Under devolution in Northern Ireland, there are three categories of legislative powers: excepted, reserved and transferred (an arrangement which follows the pattern of the Northern Ireland Constitution Act 1973). Excepted matters are subjects reserved to Westminster which will not be transferred except by primary legislation. Schedule 2 of the Northern Ireland Act 1998 specifies excepted matters. They include international relations, defence and security; and national taxation.

Schedule 3 of the Northern Ireland Act 1998 sets out reserved matters. They are subjects which could be transferred by Order to the Assembly at a later date, with cross-community consent and agreement from Westminster. They include criminal law, policing and justice; emergency powers and civil defence. Policing and justice are particularly significant powers on this list, of symbolic as well as practical importance. In March 2009 the UK Parliament passed legislation enabling it to be devolved, but there have been disagreements within the Assembly and Executive about the details of implementation and progress is tortuous.

The areas transferred to the Assembly are defined negatively, being those that are not defined as excepted or reserved. They include health, social services and public safety; education; agriculture and rural development; enterprise, trade and investment; and culture, arts and leisure.

The devolution settlement for Northern Ireland – as set out in Clause 1 of the Northern Ireland Act – allows for the possibility of it leaving the Union and rejoining with the Republic of Ireland, subject to referendums in both territories. Provision of this sort has existed in various forms since the Ireland Act 1949.

There is a First Minister and a Deputy First Minister. There are 12 members of the Executive in total. Membership of the Executive is allocated to all parties with significant Assembly representation, according to the d'Hondt system. For this reason it is always a coalition. The executive has powers conferred upon it by the Assembly. There is a devolved Northern Ireland Civil Service, something which does not exist for Wales or Scotland.

There are 108 Members of the Northern Ireland Assembly, known as Members of the Legislative Assembly (MLAs). It is elected under the STV system.

The electoral system and method for allocating ministerial posts are both designed to accommodate the social divisions in Northern Ireland, that have long been associated with violent conflict, and ensure that no one group can gain control on its own.

A particularly important devolved body is the Northern Ireland Human Rights Commission,

referred to in the Belfast Agreement and set up in 1999, with a statutory basis in the Northern Ireland Act 1998. One of the tasks entrusted to the Commission was to consider the possibility of legislation enshrining in Northern Ireland rights additional to those contained in the European Convention on Human Rights (which apply to the whole UK and were given domestic statutory expression in the Human Rights Act 1998). Late in 2008 the Commission produced recommendations for a Bill of Rights for Northern Ireland that included in it a number of social and economic rights, such as the right to health, education and accommodation. Any such instrument could be passed only by the Westminster Parliament, and is dependent upon the UK government finding time in its legislative programme.

### **The British-Irish Council and the British-Irish Inter-Parliamentary Assembly**

An overview of the Northern Ireland devolution settlement should include within it two institutions which have at the same time broader significance for the UK as a whole. The Belfast Agreement provided for the formation of the British-Irish Council, which facilitates coordination between its members, which are the UK and Irish governments, the devolved administrations of Northern Ireland, Scotland and Wales, and Jersey, Guernsey and the Isle of Man. It was designed to include directly elected English regional assemblies as well if and when they were established. Before devolution there already existed the British-Irish Inter-Parliamentary Body, which was formed in 1990 at the request of Members of the Oireachtas in Dublin and the Westminster Parliament. In February 2001 it was enlarged to include representatives of the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly, the High Court of Tynwald and the States of Guernsey and Jersey. The Nordic Council was given Observer status in October 2004. In 2008 it changed its name to the British-Irish Inter-Parliamentary Assembly. It is still in the process of reconfiguring its operating arrangements to reflect these developments.

### ***London***

The establishment of a Greater London Authority (GLA), consisting of a Mayor and an Assembly, was endorsed by a referendum held in the Greater London area in May 1998. On a turnout of 34.1 per cent, 72 per cent voted 'yes'. Elections for the Mayor and Assembly were held in May 2000. The Authority became operative in July 2000. There have been subsequent elections to the Assembly and for the London Mayor in 2004 and 2008.

The statutory basis for the Greater London Authority is the Greater London Authority Act 1999; and the Greater London Authority Act 2007.

London devolution involved the transfer to the Greater London Authority of responsibilities for transport services, spatial planning, part of economic development provision and, less directly, for fire and emergency services and the police. The Mayor of London appoints some or all of the boards of four 'functional bodies': Transport for London, the London Development Agency, the London Fire and Emergency Planning Authority and the Metropolitan Police Authority; and sets their budgets.

The Greater London Authority Act, 2007 extended devolution further, giving the GLA respon-

sibility for the allocation of resources for social and affordable housing, which had previously been exercised by the Housing Corporation. The Mayor was given increased potential powers to intervene in the housing plans of London boroughs if these do not conform with the mayoral housing strategy. The Mayor's planning responsibilities were extended to take in control powers over large developments, with the ability to grant planning permission for major schemes even if the local borough rejected them. The Mayor became chair of a new London Waste and Recycling Board and was given new powers to direct the policy of the fire authority. Strategic direction over funding for skills and training was transferred to the GLA, with the Mayor to chair a new London Skills and Employment Board. The Mayor was given the right to make additional appointments to the boards of functional bodies and, if he chose to do so, chair the police authority.

The London Mayor is directly elected using the supplementary vote system. There are 25 members of the London Assembly returned under AMS – 14 first past the post, 11 top-ups.

The Assembly does not have legislative or significant executive powers, but has a role in scrutinising the actions of the Mayor and to investigate and report on "any other matters which the Assembly considers to be of importance to Greater London." It can reject the budget with a two thirds majority (17 of 25 members).

### *English Regions*

English Regional Development Agencies (RDAs) were first launched in 1999. In June 2007 nine regional ministers were appointed in England (including one for London). In November 2008 the UK Parliament voted to establish 8 English regional select committees (a select committee for London was set up in June 2009).

The Statutory Basis for Regional Development Agencies is the Regional Development Agencies Act 1998.

Under this Act, each RDA has five statutory purposes, which are:

- to further economic development and regeneration;
- to promote business efficiency, investment and competitiveness;
- to promote employment;
- to enhance development and application of skills relevant to employment;
- to contribute to sustainable development;

Following the Sub-National Review of Economic Development in July 2007 the Government decided to give RDAs responsibility for integrating regional economic development alongside planning, transport and housing into a single strategy.

Each RDA is led by a Chair and a Board of 15 people, appointed by central government. The day to day management of each agency is led by its Chief Executive who is appointed by the Board, subject to approval from Ministers (in London, the Mayor makes the appointments).

The role of regional ministers is to advise the Business Secretary on the approval of regional strategies and appointments to RDAs; to represent their regions and coordinate cooperation between agencies within them; champion their regions; and represent the government in parliamentary debates about their regions.

RDAs are accountable through their Chairman to the Secretary of State and the Chief Executives are personally accountable for the effective and efficient management of public money to Parliament (through the Department for Business, Enterprise and Regulatory Reform, their sponsor Department). RDAs devise their single strategic plans with local authority 'Leaders' Boards', but the existence of these bodies in every English region is not obligatory. Policy is scrutinised by regional select committees in the UK Parliament.

In the eight English regions outside London, there is no regionally elected component of regional administration. The elected bodies which have some input are local authorities (through 'Leaders' Boards') and Parliament (through ministers, who are in turn accountable to Parliament in general, and the regional select committees in the Commons in particular).

## Part Two: contrast and similarity

### *History and culture*

Each settlement considered here is the product of a distinct historical background. In each case the arrangements arrived at are to a significant extent produced by and designed to accommodate that which has gone before. The three now devolved territories of Northern Ireland, Scotland and Wales were, at some point in history, subject to military conquest by England, an historical fact which is associated with varying different degrees of resentment in the territories concerned and which has found its most extreme expression in separatist movements. In Scotland and Wales devolution is bound up with the idea of these territories gaining or regaining a degree of control over their own affairs, and it is seen by some commentators and politicians as a means of quelling separatist sentiment without providing independence. In Northern Ireland devolution is a key part of an attempt to settle a longstanding, often violent, dispute between two groups, one of which favours breaking with Great Britain and joining with the Republic of Ireland, while the other wishes to remain within the Union. Probably because Northern Ireland has the strongest recent tradition of violent divisions over its status within the Union, it is the only part of the UK which has an 'escape clause', providing a specific route by which it may leave the UK.

While Northern Ireland, Scotland and Wales have had periods of greater autonomy in their histories, the amount of time that has lapsed since they had their own arrangements for governance varies. Wales has been incorporated with England administratively since mediaeval times while Scotland had a Parliament until 1707 (and retained a separate legal system and currency-issuing banks thereafter, up to the present). For Northern Ireland having an elected seat of devolved government is a memory as recent as 1972. In 1979 referendums in Wales and Scotland did not deliver the votes required to lead to the introduction of proposed devolution measures. But subsequent political developments encouraged changed outlooks. During the period of Conservative government at UK level from 1979-1997, the idea of greater autonomy – or possibly independence – gained ground in Scotland and Wales, where the Conservative party lacked substantial support and became increasingly unpopular. Both

nations suffered heavily from the economic slump of the early 1980s and associated structural changes in the UK economy, for which many in Scotland and Wales blamed the economic policies of the Conservatives. The experimental introduction of the hugely unpopular Community Charge or 'Poll Tax' in Scotland later in the same decade gave further impetus in Scotland to the idea of restricting the influence of the London-based government.

Whatever the differences between them, Scotland and Wales have stronger traditions as political communities than Northern Ireland, which dates as an administrative construct only to the 1920s. As administrative constructs the English regions outside London are more recent still. They do not accord with more traditional county boundaries, or – to delve further into the past – the Anglo Saxon kingdoms of England. The ninth English region, Greater London, however, has a long tradition of elected administration, and one which was interrupted as recently as 1986 with the abolition of the Greater London Council.

Closely related to historical issues are cultural ones. In one sense Wales stands out as the most distinct in this respect, since it is the only part of the UK in which a language other than English is spoken by a substantial minority. The recent proposal by the Welsh Government that 'matters' relating to the Welsh language be brought within the competence of the Welsh Assembly is therefore a significant development. All parties have endorsed this shift, although there is less of a consensus about the precise form it will take; and there is disagreement between Cardiff and Westminster about the scope of the devolved power. An obviously important social and cultural feature of Northern Ireland, which its devolution settlement was designed to accommodate, is the sectarian division. (It exists – manifested more in cultural than political terms – in Scotland as well). The provision to ensure cross-community coalition in the Northern Ireland Executive was devised in order to accommodate this cleavage. Language is an important issue in Northern Ireland as well as Wales, although arising more as a point of principle, since English is clearly predominant. Within the Catholic community Irish Gaelic tends to be seen as the language of Ireland; while amongst the Protestant community there is attachment to English or Ulster Scots. These languages are recognised in the Belfast Agreement, and there is a north-south language Body, comprising Irish and Ulster-Scots language agencies.

Northern Ireland, Scotland and Wales all have political movements within them that philosophically favour breaking with the Union, but the extent to which they promote this objective varies, partly in line with public opinion and political realities in those territories. In Scotland the SNP has the most immediate plan to achieve independence, planning a referendum as early as 2010. Republicans in Northern Ireland have a more long term outlook, which they presumably see as dependent upon demographic trends changing the likely outcome of a referendum as provided for by the Belfast Agreement. (Northern Ireland is set apart from the other parts of the UK in this respect because of its strong links to another country, the Republic of Ireland, which it is possible it may one day leave the UK to join, and which has a specific role set out in the Belfast Agreement.) Plaid Cymru in Wales, which currently participates in the 'One Wales' coalition with the pro-union Labour Party, has tended lately to downplay its commitment to full independence, suggesting that devolution has, in Wales at least, in some respects been successful in acting as an alternative to separatism.

The eight English regions lack political and cultural traction just as they lack historical provenance. When in November 2004 a referendum was held on the establishment of an elect-

ed assembly in the North East – supposedly the region most likely to support such an idea – it was overwhelmingly rejected, by 78 per cent to 22 per cent, on a 47.8 per cent turnout. The government did not wholeheartedly campaign in favour of a ‘yes’ vote, with the Deputy Prime Minister, John Prescott, largely isolated at Cabinet level in his active support for an elected assembly. But the weak campaign cannot fully explain the seeming lack of interest on the part of most voters in the prospect of devolved regional government for England. It is clear that those who support the introduction of democratically accountable regional governance for the English regions are faced by a considerable task of persuasion, though this is not to say that it is a hopeless one. Perhaps one sense in which the English regions do have meaning beyond Whitehall is that they form, along with London, Scotland, Wales and Northern Ireland, constituencies in the European Parliament. However, these constituencies have little popular meaning other than at the time when the European parliamentary elections are held, the turnout of which is typically below forty per cent (34.5 per cent in 2009).

Finally, important to an understanding of the status of London is the extent to which it is a preponderant force within the UK as a whole – and is seen within London itself in this light. In countries such as the US and Germany, the preeminent roles in various fields – such as finance, politics, the media – are located in different cities – but London is arguably regarded as the primary location for all such activities in the UK. Given the size and importance of London, the existence of a devolved authority for London since 2000 is a far less remarkable phenomenon than the lack of any elected tier of London governance for the preceding decade-and-a-half. The explanation for this absence may partly lie in the sense of pre-eminence existing in London, which possibly lessened the perceived need for greater political autonomy to protect it from interference from elsewhere.

### *Devolution, democracy and legitimacy*

The most striking contrast which emerges from a comparison of arrangements for sub-UK level governance and administration is the absence of devolution of political power for the English regions other than London. Regional Development Agencies are ultimately accountable to and appointed by central government. Local authority ‘Leaders’ Boards’ may comprise representatives of elected local authorities, but they are not directly elected, they do not enjoy anything like the powers associated with an elected assembly and their status is informal. Democratic accountability for RDAs is through the UK Parliament, a tier above the English regional level, to which the Business Secretary and the regional ministers are answerable.

The establishment of regional select committees in the Commons comprising MPs from the region concerned represents an attempt to enhance the degree of democratic legitimacy of English regional administration. But they do not surmount the problem of a lack of directly elected tiers of governance at regional level. When electors vote in a General Election they are voting to determine the composition of the UK Parliament, from which the UK government will be formed and which will hold it to account, rather than to determine issues of regional governance and accountability. It would not be considered acceptable for the primary source of accountability for the UK government to be the European Parliament, an arrangement that in strictly formal terms would be analogous to the present arrangements for administration in the eight English regions. Moreover, at present only Labour MPs have taken up places on the regional select committees, since the other parties have objected to the way they have been devised. It was initially intended that the composition of the select committees would represent the party balance in the Commons as a whole rather than in the region concerned,



another contradiction from the point of view of the need to match provision for democratic accountability to the tier of administration at which a particular set of powers are being exercised. The Commons Justice Committee aptly summarised the position this year when noting: 'Prior to devolution, the United Kingdom was probably the most centralised state in Western Europe, and after devolution England continues to have a high degree of centralisation in its form of government'.

If the arrangements for devolution are considered on a democratic continuum, in a sense London can be placed on a different part of it to the other devolved territories. In Greater London the head of the executive, the Mayor, is directly elected and separate from the assembly, which is a relatively weak body. While the Assembly can scrutinise the activities of the Mayor, it lacks legislative power and is restricted in its ability even to reject the budget. On the other hand, in Wales, Scotland and Northern Ireland, the executive is dependent upon the elected chamber to remain in power and for the passing of legislative measures. It might be argued that the directly elected mayoral model is appropriate to London, since it has been applied to many other major cities world-wide. But there has been criticism of the lack of scrutiny and restraint of the London Mayor built into the system and the weakness of the Assembly. The distinct arrangements for Greater London could lend force to the view that it is better considered alongside the arrangements for the governance of other cities in the UK, rather than as part of the devolution process. However, the institutional structure of Greater London is as different from the largest UK cities (which lack, for instance, directly elected mayors) as it is from the other devolved territories. Moreover, the sheer size of Greater London (with a population of around eight million, larger than a number of EU member states and each of the other devolved UK territories) could suggest it should be considered as something more than just another city.

All the devolution settlements involve the use of more or less proportional voting systems. Arrangements for devolution in Northern Ireland stand out because of the use of the STV voting system rather than AMS, which is used in Scotland, Wales and London (the London Mayoral election, because it only returns one candidate, cannot use proportional representation, but uses the supplementary vote rather than just first past the post). The use of the STV system in Northern Ireland is prompted by the particular divisions in the area (as is the provision for dividing places in the government under the d'Hondt formula). In the European Parliament elections, Northern Ireland is again the 'odd man out', using STV rather than d'Hondt, as all other parts of the UK do. The AMS approach is not used in identical ways, however. The Scottish and Greater London elections use a higher proportion of top-up members and are therefore more proportional than the Welsh ones.

The UK Parliament is therefore different from all the devolved elected bodies because it uses 'first past the post' rather than a proportional system. The peculiarity of the Westminster electoral system is heightened when it is considered that proportional systems are used in the European Parliament elections as well (for which the territories discussed in this pamphlet form the constituencies); although not for local elections, except in Scotland.

Related to the issue of the extent to which the different sub-UK settlements are democratic is that of their legitimacy. The English regions do not enjoy legitimacy of their own since they exist as extensions of central governance. Where the devolved settlements are concerned, there are a variety of ways of assessing legitimacy. Important to the legitimacy of any arrange-

ment of governance are the circumstances in which it was established. The four devolved bodies were all set up following 'yes' votes in referendums and could be argued as a consequence to possess considerable legitimacy. But precisely how great was popular support for each? In so far as turnout and percentage support for the affirmative case is considered important to the level of legitimacy, devolution in Northern Ireland and Scotland can be considered significantly more legitimate at its inception than in Wales and London. In Northern Ireland the Belfast or 'Good Friday' Agreement was endorsed on an 81.1 per cent turnout by 71.1 per cent of those who voted. For Scotland, the respective figures were 60.4 per cent and 74 per cent. In Wales, on a 50.1 per cent turnout, 50.3 voted 'yes'. While 72 per cent of those who voted in London endorsed the idea of devolved governance, the turnout was only 34.1 per cent.

Aside from the legitimacy of their inception, an ongoing means of measurement is the consideration of turnout in assembly elections. The most recent turnout figures for elections to the various bodies were: Northern Ireland (2007) 63.5 per cent; Scotland (2007) 51.7; London (2008) 45.3; Wales (2007) 43.3.

These figures can be compared with those for general elections to the Westminster Parliament, broken down by UK territory. In the 2005 General Election turnout was: 62.9 in Northern Ireland; Scotland: 60.8; London: 57.8; Wales: 62.6. In every case except Northern Ireland, there was a significantly higher turnout for elections to the UK Parliament than to the particular devolved assembly. It could be argued, then, that the UK Parliament is in this sense more legitimate than the devolved assemblies. At the same time, the level of turnout partly reflects the amount of power possessed by the particular body being elected, or at least the administration which will be formed from it. Because central UK government is more powerful than its devolved equivalents, general elections are considered more important to vote in. In support of this thesis, turnout in elections for local government – the least powerful tier of all – is generally lower than that for devolved government. Whether the new powers transferred to Wales will trigger a higher turnout in the next Assembly elections remains to be seen.

Another means of measuring the legitimacy of devolution is through considering continuing levels of popular endorsement of it. Opinion polling evidence in Scotland and Wales suggests substantial support for the devolution project to date, and even the idea that it should be taken further. An ICM/CANS survey in Wales in February 2009 showed 8.1 per cent opposed to any devolved government in Wales; 6.2 supporting a Welsh Assembly with fewer powers; 27.1 for the status quo; 42.2 per cent for an Assembly with more powers; and 14.7 for independence. An ICM/BBC Poll of the same month showed 4.6 supporting Welsh independence outside the EU; 7.8 independence inside the EU; 33.5 a 'Parliament' with law making and taxation powers; 10.3 a 'Parliament' with law-making but not taxation powers; 20.8 per cent an Assembly with limited law-making powers, ie: the status quo; and 19 per cent supported abolishing the Assembly and remaining within UK. A Populus/Times poll in Scotland published in April 2009 showed 21 per cent favouring Scottish independence; 41 supporting more powers for the Scottish Parliament stopping short of independence; 26 the status quo; and 8 fewer powers for the Scottish Parliament.

These opinion poll findings for Scotland and Wales indicate growing legitimacy since the inception of devolution, a trend which is notably pronounced for Wales. This shift in opinion suggests that the establishment of political institutions can in some circumstances help to cre-

ate or enhance political identity, and that the success of such a project is not purely dependent upon pre-existing enthusiasm, but can generate its own momentum.

By contrast, in Northern Ireland the 2008-09 Northern Ireland Life and Times Survey showed a drop-off in support for the devolution settlement within the Protestant community, from 72 to 64 from 2007 to 2008; with support for direct rule rising from 17 to 25. Amongst Catholics support for devolution was 35 and 36 across the two years.

### *Entrenchment*

Another point of distinction between the different arrangements for sub-UK governance and administration is the degree of entrenchment they enjoy. On a strictly formal level, all are vulnerable to intervention, alteration and even abolition by Westminster/Whitehall; and any extensions to their power require assent from the centre. In practical terms, it is hard to imagine devolution in Scotland, Wales and London being significantly scaled back or abolished without referendums taking place. Nor is it easy to imagine that such referendums could be won by the opponents of devolution. There seems to be strong protection, in terms of convention, from unwanted intervention from the centre. For instance, in Scotland, the so-called 'Sewel Convention' makes any Westminster legislation in devolved areas subject to the approval of the Scottish Parliament, in the form of a 'Legislative Consent Motion'.

Northern Ireland represents in this context a case apart. On the one hand this settlement has a degree of protection the others lack since it is enshrined not only in UK legislation, but in international agreements between the UK and the Republic of Ireland registered with the United Nations. On the other hand, devolved institutions in Northern Ireland have been suspended, on the first occasion by the UK seemingly acting unilaterally, on later occasions in consultation with the Republic. The possibility of similar measures being taken in future, or even of the abandonment of arrangements for devolved governance, is entirely contingent upon the course of the Northern Ireland peace process.

Arrangements for regional administration in the eight English regions do not enjoy the de facto safety from intervention from the centre that devolution outside Northern Ireland does. The Labour government that introduced RDAs did so without referendums in the areas concerned, and has reorganised regional administration subsequently without electoral consultation. The only referendum that has been held was the one that rejected an elected assembly in the North East. There is no reason to suppose that a future government of any political complexion would feel inhibited in introducing more change of this sort without holding specific votes in the areas concerned, including abolishing the regional tier in England as we know it – a course to which David Cameron has explicitly committed the Conservative Party.

Devolution for the four devolved territories is unlikely to be threatened from Westminster/Whitehall. But there are signs of threat to the current devolution settlement from within for Northern Ireland and Scotland, and to a lesser extent for Wales. Devolution in Northern Ireland is bound up with the peace process encapsulated in the 1998 Belfast Agreement. Tensions around this agreement are constant and there is always potential for one or more of the parties to break with it, threatening the settlement, and the devolution that is part of it. In Scotland the threat to the devolution settlement comes primarily from the Scottish nationalist movement, which has enjoyed considerable political success in recent years.

Secessionism does not enjoy the same currency in Wales as it does in Scotland. Plaid Cymru has shown a willingness to work within and attempt to build upon the existing system. There is no sign of a movement to break with devolution arrangements for Greater London.

### **Powers**

Once again at the far end of a spectrum, Greater London stands out amongst devolved tiers of elected governance in having the fewest powers available to it, except in the sense of the direct access to money, discussed below, and the possession by the Mayor of a responsibility for the promotion of economic and social development, and environmental improvement, in London. While Wales and London have their powers set out positively, Scotland and Northern Ireland have them broadly defined negatively – that which is not forbidden to them can be done (for lists of devolved and non-devolved powers for Northern Ireland, Scotland and Wales, see Appendix One). The negative approach appears to be the favoured one by those who advocate decentralisation, since it means that the default position regarding any particular power is that it is devolved. The Richard Commission proposed that the settlement for Wales should shift to the negative approach, but the UK government did not support this idea.

A particular power available to the Scottish Parliament makes it stand out from other devolved institutions in the UK – the power to vary the basic rate of income tax by 3 pence in the pound in either direction. The fact that the Scottish devolution settlement is the only one in the UK involving the possession of such a right serves to highlight the limited scope of the devolution programme in the UK when placed in international perspective. Furthermore, the amounts potentially involved are not immense. If used to the full, it would make a difference of about £1 billion within a budget of about £30 billion. Moreover, perhaps indicating the degree to which the UK still has a centralised political culture, the power to vary taxation has never been used in Scotland. It could be seen as perverse that even under an SNP administration seeking full independence from the UK, a slight fiscal variation from the centre is seen as unnecessary.

Consequently, the financing of all devolution settlements in the UK (aside from the devolution of responsibility for local government finance) has been based around formulae determined at the centre and funded out of a single pot of tax revenue raised across the whole of the UK (for the 2009-10 budgets, in the context of overall UK public expenditure, see Appendix Two). The London Mayor, it should be noted, is an exception in enjoying more direct access to taxes and funding from charges, through a council tax precept, transport fares, and the congestion charges. But, the London Mayor apart, participants in devolved governance are vulnerable to the criticism that they are engaging in ‘fantasy politics’, making decisions over how to spend money which they are not responsible for raising. The unreality of this arrangement has been compounded until recently by a favourable economic climate meaning there has been relatively little pressure on the funds made available centrally.

However, the Calman Commission proposals on finance, if put into practice, would alter the constitutional position in Scotland significantly, through substantially expanding the fiscal power and responsibility attached to Scottish devolved governance (see Appendix Three). While the Scottish administration has not previously used its tax varying authority, it would in effect be compelled to use this new power, since the block grant made available to it cen-

trally would be reduced and would have to be made up by Scottish taxation. While the decision might be taken merely to keep taxation levels the same as they are elsewhere in the UK, nonetheless this extension of devolution would, in the words of Calman 'make clear that the Scottish Parliament is not wholly dependent on grant from another Parliament and now has the responsibility for raising a significant proportion of its own revenue in a manner accountable to the electorate.'

Extensive speculation about the outcome of such a transfer of responsibility to Scotland is possible. For instance, depending on how it was used, would there be an impact upon the level of support for devolution – or indeed independence? And would the political contest take on an enhanced importance for the population, leading to higher turnouts in elections to the Scottish Parliament?

Aside from the particular powers it possesses the Scottish Parliament is marked out as something more than the other seats of devolved government because it is called a 'Parliament' rather than, as the equivalent bodies elsewhere in the UK are, an 'Assembly'. The unilateral decision by the Scottish National Party in 2007 to re-name the Scottish Executive the 'Scottish Government' was a further important development in the rhetoric of political devolution. The establishment of an officially labelled Welsh 'Government' is significant as well, and unlike in the Scottish case this change was enacted with agreement at UK level.

There is a clear tendency towards the extension of devolved powers over time (notwithstanding the suspension of devolution in Northern Ireland, and that the Calman Commission has proposed removing some powers from Scotland, while granting extra ones to it at the same time). But all such extensions are subject to cooperation at UK level. This proviso has contributed to a bottleneck of Legislative Competence Orders in Wales. By contrast for Northern Ireland the process has been reversed, with London quicker to move to devolve policing and justice than the devolved tier has been to take it on, owing to internal disagreements within the latter. Another change that requires support from Westminster is the introduction of a Bill of Rights for Northern Ireland, which requires the consent of the UK government and the allocation of space within the legislative programme of the UK Parliament. Along with taking on new powers, the Greater London Authority has seen a substantial expansion in its budget, which stood at £4.7 billion in 2002-03, rising to over £10 billion by 2007-08.

Perhaps the most dramatic extension of devolution was the one provided for by the Government of Wales Act 2006 (though for some it did not go far enough, and it did not include key recommendations by the Richard Commission). This legislation not only led to a change in the content of the devolution settlement, but its form. It provided the Assembly with the ability to legislate and opened up the possibility for new powers to be added over time, and for a further expansion in its scope of activity. This development suggests that the Welsh devolution settlement has been the most dynamic of them all. Even if the Calman Commission recommendations are implemented in full, they would arguably not alter the nature of the devolution settlement for Scotland as drastically as the Government of Wales Act did for Wales. Alongside this development the appointment of a Children's Commissioner for Wales in 2000 and in 2008 a Commissioner for Older People in Wales have served to advance the devolution settlement for Wales.

## *Political diversity*

The Commons Justice Committee judged this year that devolution has ‘fundamentally transformed politics within the devolved territories’. Partly because of the electoral systems used and partly because of particular considerations in the areas concerned, devolution has led to the emergence of political dynamics and power balances different from those apparent at UK level. Parties regarded as ‘small’ or ‘medium’ sized on the UK stage but with significant standing in particular parts of the UK have been given new opportunities. In Northern Ireland, where the main British parties have by tradition not stood, the more radical unionist and nationalist parties have gained support at the expense of the more moderate ones, and become the leading forces within the Northern Ireland Assembly and Executive, as well as the main representatives of Northern Ireland within the peace process. In Wales Plaid Cymru has entered government. In Scotland, initially the Liberal Democrats entered into government, in a coalition with Labour. Subsequently, in 2007 the SNP formed a minority administration. The main political battle in Scotland is between Labour and the SNP, not, as it is for control of the UK Parliament as a whole, between the Conservatives and Labour. In London, while the party configurations are closer to those of the UK as a whole, the British National Party won in 2008 a seat on the Assembly, foreshadowing its successes in the European Parliament elections of the following year. There has been policy diversity as well. Scotland, for instance, has pursued markedly different health and education policies to the UK government. Initiatives on care for the elderly and university fees have attracted much interest throughout the UK. The Northern Ireland Human Rights Commission has advocated the legal enshrinement of social and economic rights in a Bill of Rights that are not yet protected in this way anywhere in the UK (though whether the advice of the Commission will be acted upon remains to be seen).

## **Conclusion: parallel, convergent or divergent paths?**

Can these different paths of regional administration and devolution be said in any way to represent the development of a federal settlement for the UK? In attempting to answer this question, we must recognise that there is no one set pattern to which all federal constitutions must conform. There is on the other hand a cluster of characteristics typically associated with such constitutions. These characteristics might include a codified constitution delineating the rights and responsibilities of each tier of governance; a UK Bill of Rights; a UK Supreme Court to interpret and enforce the constitution and Bill of Rights; and mechanisms for coordination between the different tiers of governance, possibly including an upper chamber in the UK Parliament giving representation to the different UK territories. There are nascent elements of all these characteristics to be discerned in the present constitutional structure of the United Kingdom, although there remains much ingrained hostility within sections of the political community to the idea of complete constitutional codification, as shown by the recent refusal of the government to place the Royal Prerogative powers in full on a statutory basis (see: Review of the Executive Royal Prerogative Powers: Final Report [Ministry of Justice, October 2009]).

It could be argued that a barrier to the appearance of anything approaching a federal UK is the heterogeneity of existing devolution settlements, for instance whether their devolved powers are defined negatively or positively. But while distinctions exist, they are outweighed in importance by the similarities. Under all the settlements, different parties have had to cooperate with each other; and all of them use proportional voting systems. Devolved administrations and assemblies have worked closely with each other, both bilaterally and through the

British-Irish Council and the British-Irish Inter-Parliamentary Assembly. In some instances, an innovation introduced in one devolved territory has been subsequently imitated elsewhere in the UK. The Northern Ireland Human Rights Commission, set up in 1999, has been followed by the introduction of similar bodies for England and Wales; and for Scotland. The idea of a Children's Commissioner, first introduced in Wales in 2000 has been followed in England, Northern Ireland and Scotland. While the different components of the UK have distinct historical and cultural tendencies that are sometimes difficult to reconcile with participation in a single multinational state, a federal settlement is perhaps a more viable solution than the existing, institutionally inflexible, unitary system. As a multinational state with a history of sometimes violent tensions between communities, the UK is not entirely different from states which have progressed towards a federal settlement, including Spain.

When considered in international perspective, all of the devolved institutions suffer from substantial limitations upon the degree of power under their autonomous control. But the movement has been largely in one direction – towards greater autonomy. New powers have been taken and the process is likely to continue. The Government of Wales Act 2006 represented a qualitative change for the Welsh settlement. If the fiscal proposals contained in Calman are implemented they would be of substantial significance – particularly if they are used significantly to alter levels of taxation and expenditure relative to the rest of the UK, although this outcome is not guaranteed. They could perhaps set a precedent that other nations, such as Wales, might later follow. Furthermore the degree of entrenchment and popular support for devolution has exceeded the expectations held by many at its inception.

Whether or not it is leading in a federal direction, the devolution programme introduced over the last decade is in political – though not formal – terms secure from intervention by the centre, traditionally a characteristic of federal systems. The settlement which is most vulnerable to change is the one that adheres the least to federal principles, namely the system of administration of the eight English regions. England – or rather the English regions other than London – has been left behind by devolution. Even those who do not support the application of federal principles recognise the problematic anomalies of arrangements for English regional administration. The Justice Committee concluded that:

the system of government for England, which remains relatively centralised under the management of the United Kingdom Government and the legislative authority of the United Kingdom Parliament, is at least called into question [by devolution], and, in the view of a significant proportion of our witnesses, in need of fundamental change. There is no consensus on what change should be made to the system of government for England, but every major political party has put forward or is considering change in this area, with hardly anyone arguing for no change at all...the system of government of the United Kingdom as a whole has changed irreversibly from that of an undifferentiated unitary state, and will continue to adapt to the changes already made; and the way in which England is currently governed may be unsustainable in this changed system.

One option that has been put forward that could be seen as in keeping with federal principles is the introduction of some form of English Parliament. Advocates of such an approach within the Westminster Parliament include the Labour MP Derek Wyatt; while at the level of devolved governance, it has supporters including the Conservative Welsh Assembly member,

David Melding. But it has long been argued (see: Andrew Blick, *A Federal Scotland Within a Federal UK?* [London: Federal Trust, 2009, pp22-3]) that such a measure would be difficult to reconcile with a stable federal settlement for the UK, given the dominance in population and other terms of England within the UK. At the same time, English regional administration suffers from democratic weakness and lacks popular support, and is likely to some extent to be rolled back in the event of a Conservative UK government in 2010.

But both supporters and opponents of a federal UK should bear in mind that political circumstances in the UK can change rapidly and in unpredictable ways. The English regions will continue to exist in some form, since they will continue as European constituencies, and it is doubtful that any UK government will be able to abolish them completely for administrative purposes. The existence of structures of this sort, however unsatisfactory, could conceivably, in the appropriate political climate, help generate momentum towards and facilitate the realisation of democratically accountable regional autonomy in England.

Moreover the devolution programme has been accompanied by changes at the centre, which could themselves be significant to any future serious attempt at the establishment of a federal UK. They include a general tendency towards constitutional codification; the Human Rights Act 1998, which could be seen as an embryonic Bill of Rights for a federal UK; and the UK Supreme Court, currently becoming operational, which could act as the ultimate arbiter in disputes between different tiers of governance within a federal UK. In a federal settlement, it might be expected that an upper chamber in the UK Parliament could provide for representation of the different territories that composed the UK. While the present House of Lords could not fulfil this role, there is cross-party agreement that it needs to change (see: *An Elected Second chamber: Further reform of the House of Lords* [London: Stationery Office, July 2008, Cm 7438]). A possible development, to which the main parties are publicly committed, is that of a shift to a wholly or largely directly elected House of Lords. An institution of this sort could potentially form part of a federal UK, since the composition of upper chambers in federal constitutions such as that of the US is determined by direct election.

If the Lords does not itself develop into a federal-style upper chamber, are there other possible steps that could lead to that outcome? Some progress could potentially be made through creating institutions modelled on and parallel to the British-Irish Council and the British Inter-Parliamentary Assembly, which would include only UK bodies. A body based on the latter in particular could act as an embryonic federal upper chamber if it incorporated, alongside the Northern Ireland, Welsh and Scottish elected chambers, the Greater London Assembly (since it has provision for fully democratic governance) as a full member; and representatives of the English regions outside London (possibly drawn from the Leaders' Boards) as observers. The status of the English regions could be upgraded if and when they established directly elected assemblies. There might thereby be created within each region an institutional dynamic to acquire a democratic basis, since it would provide enhanced status within a potentially powerful UK body. Such an arrangement could signify a shift towards a 'fuzzy federalism' gradually supplanting the 'fuzzy unitarism' which currently characterises the UK constitution.

Increasing pressure has accumulated for a review of the 'Barnett Formula', used by the UK Treasury for calculating annual increases in the allocation of funding to Scotland, Wales and Northern Ireland. The House of Lords Select Committee on the Barnett Formula reported in July 2009. It called for 'A new system which allocates resources to the devolved administra-



tions based on an explicit assessment of their relative needs'. While the terms of reference of the committee were circumscribed, preventing it from considering the nature of the devolution settlement itself, the new needs-based system it advocated could, if developed, form part of the arrangements for determining the money available to each component within a federal UK. In such a system, these funds would be complemented by those raised directly by each individual component of a federal UK. There will be a movement towards this latter form of fund-raising if the Calman proposals on fiscal devolution are implemented.

There are also significant developments at European level possibly conducive to constitutionally guaranteed regional and national governance. Assuming it is implemented, the Lisbon Treaty will incorporate a new protocol on subsidiarity which gives territories, including Wales, Scotland and Northern Ireland the possibility of pre-scrutiny of proposed EU legislation as a distinct part of member scrutiny. It would require the UK, like other EU member states, to strengthen the role of these devolved nations internally in decisions about the EU; and externally in EU level ministerial meetings in areas which affected their interests.

In summary, it cannot plausibly be argued that the UK is set upon an inevitable path towards a federal settlement. However, the last decade has certainly seen the development of certain institutions and tendencies which could potentially be used as components in a federal UK. A serious project to establish such an entity would not be starting from nothing. The existing features of the UK it could draw upon would include:

- the existence of devolved settlements in four devolved territories giving expression to diverse political alignments with reasonably high degrees of popular support for the devolution processes of which they are a manifestation;
- the contribution that devolved governance has made to establishing the principle that subnational governance demands democratic legitimacy;
- the dynamic nature of these settlements, meaning that the overall tendency is towards expansion of devolution. Potentially Scotland is on the brink of significant fiscal empowerment;
- a de facto security from intervention from the centre for these settlements;
- new institutions and instruments at the centre including the UK Supreme Court and the Human Rights Act;
- other new sub-UK institutions such as human rights commissions and children's commissioners;
- the British-Irish Council and British Irish Inter-Parliamentary Assembly;
- a needs-based formula for the central redistribution of funding in the UK, if introduced to supplant the Barnett Formula;
- if implemented, the new EU protocol on subsidiarity;
- an evidently democratically inadequate arrangement for the administration of the English regions outside London.

Those who favour the establishment of a federal UK know that there are real political and administrative barriers to the realisation of that goal. They can however legitimately argue that individual elements of a potential federal system are gradually emerging which could, in circumstances not yet entirely predictable in their detail, create a more favourable background for a British federal system than at any time throughout the last century.

## Appendix one: Powers of devolved governance *Scotland*

Under the Scotland Act 1998, the Scottish Parliament can make primary and secondary legislation in areas not reserved to Westminster (specified in schedule 5 of the Act) or protected from modification (also specified in schedule 5). In other words the devolved powers are defined negatively. The list of reserved matters is lengthy and complex. In some areas legislative competence differs slightly from the executive powers devolved to the new administrations, as the Executive (or 'Government' as it has now named itself) can be granted additional powers where the Parliament has no legislative competence. Below is a summary of the reserved subjects:

- the constitution
- defence and national security
- fiscal, economic and monetary system
- trade and industry, including competition and customer protection
- transport (not particular to Scotland) including railways, transport safety and regulation
- social security
- medical ethics: abortion; human fertilisation and embryology; genetics; xenotransplantation and vivisection.
- broadcasting
- foreign affairs
- the civil service
- immigration and nationality
- energy: electricity, coal, oil, gas, nuclear energy
- employment
- equal opportunities

Devolved subjects are those which do not fall under the reserved categories. They include:

- health
- education and training
- local government
- social work
- housing
- planning
- tourism, economic development and financial assistance to industry
- some aspects of transport, including the Scottish road network, bus policy and ports and harbours
- law and home affairs, including most aspects of criminal and civil law, the prosecution system and the courts

- the police and fire services
- the environment
- natural and built heritage
- agriculture, forestry and fishing
- sport and the arts
- statistics, public registers and records

## *Wales*

Under the Government of Wales Act 2006 the Assembly is able to make laws by utilising what is known as its 'legislative competence'. Its powers are defined positively. Legislative competence is defined using two categories: 'fields' and 'matters'. A field is a broad subject area; while a matter is a specific defined policy area within a field. The fields are not in themselves operative until matters are specified within them. Within its areas of legislative competence, the Assembly can make laws, known as 'Measures', which have a similar effect to an Act of Parliament. Members of the Government can have further powers transferred to them by the UK government.

The current fields are:

Field 1: agriculture, fisheries, forestry and rural development

Field 2: ancient monuments and historic buildings

Field 3: culture

Field 4: economic development

Field 5: education and training

Field 6: environment

Field 7: fire and rescue services and promotion of fire safety

Field 8: food

Field 9: health and health services

Field 10: highways and transport

Field 11: housing

Field 12: local government

Field 13: National Assembly for Wales

Field 14: public administration

Field 15: social welfare

Field 16: sport and recreation

Field 17: tourism

Field 18: town and country planning

Field 19: water and flood defence

Field 20: Welsh language

Within each of the above fields, specific matters are listed in relation to which the Assembly can make Measures.

## *Northern Ireland*

Under devolution in Northern Ireland, there are three categories of legislative powers: excepted, reserved and transferred. Excepted matters are subjects reserved to Westminster which will not be transferred except by primary legislation. Schedule 2 of the

Northern Ireland Act 1998 specifies excepted matters. They include:-

- the Crown
- parliamentary elections, and Assembly elections including the franchise
- international relations
- defence of the realm
- honours
- nationality
- national taxation
- appointment and removal of judges
- registration of political parties
- coinage
- national security
- nuclear energy and installations
- regulation of sea fishing outside Northern Ireland
- provisions dealt with in the Northern Ireland Constitution Act 1973
- the subject matter of the Northern Ireland Act 1998 with specified exceptions

Schedule 3 sets out reserved matters. They are subjects which could be transferred by Order to the Assembly at a later date, with cross-community consent. They include:

- criminal law
- policing
- prisons
- civil aviation
- navigation
- the Post Office
- disqualification from membership of the Assembly
- emergency powers
- civil defence
- consumer protection
- telecommunications

The areas transferred to the Assembly are defined negatively, being those that are not defined as excepted or reserved. They include the following:

- finance and personnel
- health, social services and public safety
- education
- agriculture and rural development
- enterprise, trade and investment
- environment
- culture, arts and leisure
- learning and employment
- regional development
- social development

**Appendix Two:** Devolved national administration budgets 2009-10

Scotland: £29.1 billion

Wales: £15.3 billion

Northern Ireland Executive (2008/09) : £10.1 billion

Projected UK public expenditure 2009-10: £671.4 billion

**Appendix Three:** Excerpt from Final Report of the Calman Commission: Serving Scotland Better: Scotland and the United Kingdom in the 21<sup>st</sup> Century, Part 3: Strengthening Accountability in Finance, pp111-2.

RECOMMENDATION 3.1: Part of the Budget of the Scottish Parliament should now be found from devolved taxation under its control rather than from grant from the UK Parliament. The main means of achieving this should be by the UK and Scottish Parliaments sharing the yield of income tax.

- a. Therefore the Scottish Variable Rate of income tax should be replaced by a new Scottish rate of income tax, collected by HMRC, which should apply to the basic and higher rates of income tax.
- b. To make this possible, the basic and higher rates of income tax levied by the UK Government in Scotland should be reduced by 10 pence in the pound and the block grant from the UK to the Scottish Parliament should be reduced accordingly.
- c. Income tax on savings and distributions should not be devolved to the Scottish Parliament, but half of the yield should be assigned to the Scottish Parliament's Budget, with a corresponding reduction in block grant.
- d. The structure of the income tax system, including the bands, allowances and thresholds should remain entirely the responsibility of the UK Parliament.

RECOMMENDATION 3.2: Stamp Duty Land Tax, Aggregates Levy, Landfill Tax and Air Passenger Duty should be devolved to the Scottish Parliament, again with a corresponding reduction in the block grant.

RECOMMENDATION 3.3: The Scottish Parliament should be given a power to legislate with the agreement of the UK Parliament to introduce specified new taxes that apply across Scotland. The new procedure we are recommending in Part 4 of our Report for the Scottish Parliament to legislate on reserved issues with the agreement of the UK Parliament could be used for this.

RECOMMENDATION 3.4: The block grant, as the means of financing most associated with equity, should continue to make up the remainder of the Scottish Parliament's Budget but it should be justified by need. Until such times as a proper assessment of relative spending need across the UK is carried out, the Barnett formula, should continue to be used as the basis for calculating the proportionately reduced block grant.

RECOMMENDATION 3.5: This system will require a strengthening of the intergovernmental arrangements to deal with finance.

- a. The present Finance Ministers Quadrilateral Meeting should become a Joint Ministerial Committee on Finance (JMC(F)), and should meet regularly on a transparent basis to discuss not just spending but taxation and macro-economic policy issues.
- b. HMRC should advise Scottish Ministers in relation to those devolved taxes it is tasked with collecting and their responsibilities in relation to income tax and should account to them for the operation of these Scottish taxes. Scottish Ministers should be consulted on the appointment of the Commissioners of HMRC.
- c. All the relevant spending or grant calculations done by HMRC and HM Treasury should be audited by the National Audit Office which should publish an annual report on the operation of the funding arrangements, including reporting to the new JMC(F) and to the Scottish Parliament.

RECOMMENDATION 3.6: These changes should be introduced in a phased way, step by step, to manage the risks of instability in public finances and of windfall gains or adverse shocks to the Scottish Budget.

RECOMMENDATION 3.7: The Scottish Ministers should be given additional borrowing powers:

- a. The existing power for Scottish Ministers to borrow for short term purposes should be used to manage cash flow when devolved taxes are used. Consideration should be given to using the power in the Scotland Act to increase the limit on it if need be.
- b. Scottish Ministers should be given an additional power to borrow to increase capital investment in any one year. There should be an overall limit to such borrowing, similar to the Prudential regime for local authorities. The amount allowed should take account of capacity to repay debt based on future tax and other receipts. Borrowing should be from the National Loans Fund or Public Works Loans Board.

<sup>1</sup> Though used by Calman, the term 'nations' is not used in this report to describe England, Wales Scotland and Northern Ireland, since its application to the last of these is clearly inappropriate.

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