

THE FEDERAL TRUST
for education & research

enlightening the debate on good governance

The United Kingdom: Federalism or bust?

A collection of
essays from the
Federal Trust



June 2015

This book is published by the Federal Trust whose aim is to enlighten public debate on issues arising from the interaction of national, European and global levels of government. It does this in the light of its statutes which state that it shall promote 'studies in the principles of international relations, international justice and supranational government.'

Up-to-date information about the Federal Trust can be found on the internet at: www.fedtrust.co.uk

This pamphlet contains a range of views from individual authors and is published as a contribution to public debate. It should not be assumed that any of the individual authors represents the view of the Federal Trust.

© Federal Trust for Education and Research 2015

ISBN 978-1-903403-96-9

The Federal Trust is a Registered Charity No. 272241
84 Moorgate
London EC2M 6SQ
United Kingdom

Company Limited by Guarantee No. 1269848

Design by Fred Fieber

The United Kingdom: Federalism or bust?

The United Kingdom: Federalism or bust?

Table of Contents

Introduction Brendan Donnelly	6
Federal Britain – establishing a road map Stanley Henig	7
The constitutional programme of the Conservative government: a federal perspective Andrew Blick	12
A Federal Britain in a Federal Europe – a possible double helix? John Palmer	17
Scotland has changed everything Stephen Haseler	22
A federal future for the UK? A view from the North East of England Joyce Quin	28
The UK's territorial and governance challenge: regions, nations and cities Jo Shaw	32
Wales and the Changing Union Hywel Ceri Jones	36

Introduction

This collection of essays is dedicated to the memory of John Pinder, who died earlier this year. Its central theme is a topic dear to John's heart, namely the application of federalist principles to contemporary political choices. For John, federalism was by definition a philosophy of rationalism, goodwill and good faith, qualities which he notably exemplified in his personal behaviour. Federalism is rational because it seeks to ensure that public decision-making occurs at the level most likely to generate right and effective decisions. It is based on goodwill because it is not the interest of the state that should dictate political structures but the interests of the individual citizen affected by decisions taken on his or her behalf. Above all, John believed that federal structures make it easier for all involved to behave with good faith towards one another, recognising their interwoven rights and responsibilities. The writers of this pamphlet represent a broad spread of federalist ideas and analysis. All of them, however, are eminently fitted to carry forward John Pinder's legacy.

Brendan Donnelly
Director, The Federal Trust
June 2015

Federal Britain – establishing a road map

Stanley Henig

Stanley Henig was Professor of Politics at Lancaster University, MP for Lancaster and Leader of Lancaster City Council. He is a Senior Research Fellow of the Federal Trust.

At the heart of federal thinking is the concept of democratic multi-level governance. Responsibility for determining, administering and delivering those services and activities deemed to be in the public sector should rest at the most appropriate level. Each tier of government should be constitutionally entrenched and autonomous within its sphere – and this includes tax-raising powers. The democratic element is based on direct election by citizens to each level of government, although that does not necessarily exclude a limited element of indirect election.

Until relatively recently and apart from direct election, few of the above characteristics have ever applied to governance in the United Kingdom. The responsibilities, powers and finance of local government have been determined by central government/Westminster-Whitehall and the general trend, certainly post-1945, has been to reduce them. The one significant change around the beginning of the current millennium was the introduction of a tier of devolved government in Northern Ireland, Wales and Scotland. There is an assumption, not necessarily legally based that, in contrast to what has always been the case with local government, the devolved assemblies and administrations cannot be removed by central government. Nor can it unilaterally take away or change the responsibilities, powers and finance of the devolved assemblies and administration.

There are two particularly interesting and, in the context of discussion of a federal Britain, relevant aspects of this devolution. First, it did not come about through any broad acceptance of the concept of multi-level governance, but rather as an answer to major specific problems within Northern Ireland and, to a lesser extent, in Scotland. Second, it was at the time often described as a process rather than an event even though there is no evidence that our central government had any clear vision as to how that process might develop.

A quasi-official narrative of the British constitution is that it has evolved peacefully over the 800 years since Magna Carta: unwritten and uncodified, it can always adapt to circumstance. In practice this has occasioned

'ad hoc' political responses to basic constitutional issues. Contemporary politics is thus always the major determinant of any constitutional change or evolution. In marked contrast to federal thinking, within which federal structures and certainly any formal federation can only be based on written and codified texts, the British method of adaptation has invariably been of the moment. Established structures of local government can be swept away, even on occasion because their political activities displease central government whilst new structures can be created to deal with a perceived problem.

In the early 1970s the entire structure of local government was re-organised on a uniform two tier basis. Within thirty years, central government thinking had changed. Many of the new councils were abolished or replaced with a broad move towards a unitary single tier structure: a reform that was in fact never completed. Finances have been increasingly tightly controlled – including taxes levied by local authorities. The way in which local councils operate has also been changed by central government diktat with the introduction of leader/cabinet models and in some cases directly elected mayors.

In 1994 the Conservative government of John Major established government offices for the English regions as a form of decentralisation. Various other regional bodies grew up around them, only for them all to be swept away in 2011 by the Conservative led coalition. Forward four years and another Conservative government seems intent on recreating new and different quasi-regional structures in England built around major cities and led by directly elected mayors for the whole area. Indeed discussion of how to handle the growing Scottish pressure for more autonomy coupled with a determination by the Conservative party to re-engage with Northern England has actually promoted or provoked an apparently more friendly attitude toward federalism. No longer, it seems, is the concept of federalism somehow un-British and only fit for Australia, Canada, Germany, the USA and the European Union!

For federalists this apparent shift in thinking on the part of the political establishment and elites represents both an opportunity and a challenge. I would argue that in practice the opportunity is more obvious and tangible and yet more difficult to grasp. The challenge, perhaps better described as a warning, is to recognise that late conversion to a cause may not be for ever.

The recent general election reflected deep fissures in the body politic of the United Kingdom and a worrying sense of alienation from the traditional political process and the perceived 'norm' of two party politics – winner takes

all!. On this occasion the winning party – with an overall majority of seats, sufficient in my view for a five year term of office – received the support of only around 25% of eligible voters. Fronted by those parties which were particularly discriminated against by the voting system – especially UKIP and the Greens – there will be a clamour once more for change to a more proportional system. At this stage there is no likelihood of support from either of the two major parties which for these purposes represent the political establishment. For them, espousal of some mild form of federalism would be a more satisfactory antidote to rising discontent than changing ‘first past the post’. By way of comparison, whilst statements made at different times by Scottish National Party leaders are in some respects more consistent with some kind of British federal structure than with the official formal desire for independence, they are not necessarily going to appreciate this in practice. In the circumstances and given our constitutional history, the challenge to federalists is NOT to accept some quick fix to these problems which may appear to espouse a federal solution whilst the intention of the current government, the establishment and the political elites is simply to ‘kick the problem into the long-grass’. That latter might well be the truth behind any apparent reversion to process rather event!

What is to be done and how should we as federalists react? My own view is that the current issues – alienation from the traditional political process and widespread disaffection in Scotland - cannot be solved for any substantial period of time by another quick fix. We need to re-examine our constitution and its relationship to current political controversy. The age when all such problems could literally be resolved or apparently resolved on the ‘back of an envelope’ is drawing to an end. In this connection it may be worth looking at the Scottish experience with particular reference to the first referendum on devolution back in 1979. Then the voting hurdle was not reached and the issue of devolution seemingly disappeared at least as far as Westminster-Whitehall was concerned. However, this was not the case in Scotland.

Earlier I referred to the ‘narrative’ of the British constitution. A quite different narrative has developed in Scotland. The basis of devolution is to be found in the Scottish Constitutional Convention established a decade after the first referendum and it is now claimed that in devolved Scotland there is a participatory democracy rather than the representative democracy which characterises the United Kingdom. The notion that sovereignty belongs to the people, as cited in many basic constitutional documents elsewhere,

is quite alien to United Kingdom tradition but is very much in line with the Scottish constitutional narrative.

In turn this brief narrative covering less than fifty years is far more useful as a guide for those seeking a federal future than the sometimes claimed 800 year gradual evolution of the British constitution. Our addiction to Parliamentary Sovereignty leaves the Westminster-Whitehall axis free to indulge in constitutional and institutional tinkering. At times decisions to create, abolish, amend the role, powers and finances of other forms of government seem almost literally to arise from 'the back of envelopes'. A Federal Britain cannot be brought about let alone maintained on such a basis. The time has surely come to imitate Scotland by establishing a Constitutional Convention for the United Kingdom.

The case for such a 21st century Constitutional Convention actually goes wider than the specific 'Federal Britain' agenda. Our international commitments – membership of UN, EU – and the impact of these on British law are sufficient in themselves to necessitate a fundamental rethink. An ever rising population with an increasing alienation from established political and governmental processes adds to the challenges. Nothing of course will happen overnight; our political establishment is well tuned at hoping problems will simply dissolve or go away. But sooner or later there will be a realisation of a need to examine where we are in terms of governance; and we federalists need to be prepared. In the final part of this paper I want, therefore, to highlight the most important issues from a federal perspective.

The first broad issue should be the extension and, hopefully, completion of the devolution map. Where the nations of the UK are concerned, is there a viable middle course between the existing scheme of devolution and the so-called complete independence formally sought by the SNP? Although there are issues with regard to the current settlement with Wales, there is no evidence of any comparable pressure for similar independence. This surely points to continuing with variable geometry in the modes of devolution to the nations, which in turn is a useful pointer towards handling the so-called English problem. Should England be a single devolved entity or would it be more appropriate to divide it into regions? If the latter, then the problem of boundaries - ignored when the last Labour government sought to address the issue - must be addressed. Whether this tranche of devolved government is to nations or to nations and regions, there is a strong case for some kind of constitutional entrenchment for this tier of government. There would be a need for a formula involving both Westminster-Whitehall and the

devolved authorities. Of course, the biggest issue would be the division of powers and competences between the centre and the devolved authorities.

Where local government is concerned should the key upwards relationship be with central or devolved authorities? The degree of entrenchment should perhaps not be as extensive as for the devolved authorities, but the ever-on-going tinkering with role, powers and finance should be ended. With regard to the existing pattern of local government structure, a decision needs perhaps to be taken as to whether to complete the move to single tier. Either way local councils should be encouraged in their turn to devolve some activities to community and parish groups. Where finances are concerned there is a strong case for a considerable degree of autonomy for both devolved and local authorities, however it would be reasonable for central government to grant a degree of support on a needs basis. These arrangements would be complex, but it would be reasonable to look to the Constitutional Convention for a new approach. Finally, it is hard to understand the reasoning behind the desire by central government to lay down modes of organisation – directly elected mayors etc. Surely, this should be at the discretion of local authorities.

A Constitutional Convention should also consider how the centre – which in this paper I have labelled Westminster-Whitehall - should or could be remodelled. There is a case for giving direct representation at the centre to lower tiers of governance in the new United Kingdom. One route might be found through re-examining the role and structure of the second chamber. The very title House of Lords seems redolent of an earlier age whilst the size of membership is said to make it the second largest legislative body in the world. One possibility would be to replace it with a new and smaller second chamber incorporating representation from the devolved and local authorities.

Finally consideration needs to be given to how arguments over interpretation or clashes between institutions should be resolved: a possible role for a Constitutional Court. Perhaps that sounds very un-British, but then so did a Supreme Court. Perhaps the remit of the latter could be extended.

The constitutional programme of the Conservative government: a federal perspective

Andrew Blick

Dr Andrew Blick is Lecturer in Politics and Contemporary History at King's College London, and Senior Research Fellow of the Federal Trust.

The new government has now outlined its programme for the coming parliamentary session in the Queen's Speech. Taken in conjunction with other statements, it confirms that the Conservative administration is committed to a range of measures with constitutional implications, including:

- A system of 'English Votes for English Laws' ('EVEL'), that will entail excluding members of the House of Commons elected from devolved territories from taking part in certain proceedings in the Westminster Parliament deemed to involve only England (or England and Wales).
- Further devolution for Scotland, implementing the conclusions of the Smith Commission;
- Devolution for England;
- To consult on the possibility of repealing the Human Rights Act 1998, its replacement with a British Bill of Rights and Responsibilities, and the removal of the United Kingdom (UK) from the jurisdiction of the European Court of Human Rights; and
- A referendum on continued membership of the European Union, preceded by negotiations intended to create a package of some kind to present to the electorate in the vote.

These plans, and the political issues with which they engage, seem set to attain prominence not only through the present parliamentary session, but for much of the remainder of the term of office of the present Prime Minister, Mr. Cameron. In seeking to analyse this important set of proposals, it is useful to deploy a concept, that of "federalism", which has only lately reappeared as an acceptable part of mainstream political discussion.

The term "federal" has until recently been a contaminated term in the political vocabulary of the United Kingdom (UK), applied mainly as a term

of abuse in relation to the European integration project. But lately, and particularly from around the time of the Scottish Independence Referendum of September 2014, the position began to change. Politicians from across the spectrum and various commentators are now willing to talk about a 'federal' UK as a desirable, perhaps even inevitable, outcome. In such accounts, the concept broadly serves as a means of realising a number of purposes. First, it is hoped it will provide Scotland with a degree of autonomy sufficient to induce it to remain within the Union. Second, there is an expectation that a federal system could allow the other devolved territories of Wales and Northern Ireland to continue to expand their authority. Third, it is anticipated that this model might give England more control over its own affairs, either as a single unit or via regional devolution of some kind, or both.

A new willingness to embrace the federal concept in the UK is welcome. Yet the notion of a federal UK as a frictionless and compromise-free solution to some of the major constitutional and political difficulties of the UK is vulnerable to the charge of over-optimism. The federal concept was for many years rejected without due consideration of its real meaning and possible application to the UK. Now there is a danger that it is being taken up in equally casual and unreflective fashion. The apparent logic of some current "federal" discourse in the UK is flawed in at least two respects. Too many born-again federalists assume that different parts of the UK can largely divest themselves of responsibility for each other; and these same recent converts assume that the Westminster Parliament will continue to possess at least in principle an unlimited legal authority. Both propositions are contradictions of true federal principles. Under a federal constitution, powers are divided between a 'federal' centre, and the different component parts or 'states' without this division's undermining the political and economic solidarity of the whole political system. At the same time the entrenched autonomy of lower levels of government is not subject, even in theory, to interference from a 'sovereign' central legislature, with a core set of functions reserved to the 'federal' governmental institutions.

Federal models do offer a potential means of managing a multi-national territory such as the UK, and are employed in countries of this sort including Belgium, Canada and Spain, though not without difficulties. But if the end of binding together a nationally diverse country through a federal approach is to be achieved, certain conditions must be fulfilled. The system must attach the same degree of importance to cohesion that it does to diversity. At present, in some areas such as fiscal powers, there is reason to believe that UK policy-makers are affording excessive attention to diversity, with a

priority attached simply to transferring tax-raising capacity, in particular to Scotland, without due consideration of the consequences for the whole of such wholesale transfer. A further condition of success for a federal system is that, while it is important to retain key powers at the federal level, there must be mechanisms to ensure that these authorities are deployed in a consensual fashion that engages, as far as possible, both the states and the federal tier. This principle is difficult to reconcile with the traditional UK constitutional doctrine of parliamentary sovereignty. Though there are signs of a softening in the approach to the Human Rights Act and ECHR, the present government nonetheless remains wedded in principle to the idea that Westminster Parliament can legitimately deploy its special authority to force through changes of a constitutional nature, even if there is significant opposition to them in other parts of the UK.

Federal concepts are undoubtedly relevant to the contemporary UK for a number of reasons. They have formed part of the current of ideas from which the constitutional agenda of the present government has derived, in particular in its proposals for EVEL and the extension of devolution. A federal perspective can help us to understand current Conservative plans, and assess their chances of delivering on their objectives. It also provides a potential alternative constitutional model for the UK with which we can compare our current arrangements and their patterns of development. Finally, it can provide a basis for a project intended to devise proposals for workable reform of the UK constitution. Such a project, drawing on knowledge of federal principles and practices, can offer examples of systems to follow and adapt, and discourage the pursuit of conceptually flawed pseudo-federal solutions. Properly conceived, a federal UK could be a means – or perhaps the only means – of resolving some fundamental difficulties within the UK constitution. It should not however be misconstrued as an easy enterprise, as a painless and minor adjustment of present structures.

With these ideas in mind, certain observations are possible regarding the Queen's Speech and overall government constitutional programme.

- EVEL could prove detrimental to the cohesion of the UK. Some might regard it as providing a means whereby English national identity can find an institutional expression that it presently lacks, and which it needs. Even if this view is correct, EVEL could well have a destabilising impact, and undermine the chances that the UK will survive in its current form. A main reason for this possible difficulty is the relative size of England within the UK, accounting for more than 80 per cent of the total population. Supposedly 'English' decisions made by English MPs, from

which non-English MPs were excluded, would inevitably impact upon the rest of the UK. Viewed from other parts of the UK, EVEL could be perceived as amounting to a unilateral declaration of independence by England. Seeking to provide for English legislation within the UK Parliament rather than through a specially created institution, as would happen under a federal system, could create problematic divisions at the highest level of the UK constitution. The absence of devolution from England (outside Greater London) while it exists elsewhere in the UK, is an increasingly problematic anomaly for the UK constitution. EVEL runs the risk of creating more problems than it solves

- The present government is committed to a process of transferring powers to chosen city regions on a piecemeal basis, with the terms determined at the centre, and the Chancellor of the Exchequer playing a leading role. There is a strong case for enhancing sub-national democratic governance in England. But the range of powers on offer is far less extensive than those available to the already devolved territories of the UK, and the arrangements intended for democratic oversight of the powers once transferred appear to be of questionable effectiveness. People living in England seem to have little say in whether they will be the recipients of devolution, and if so the form it will take. Under a federal system, 'state' level government might be expected to cover the entire country, and a 'federal' level finance minister would not possess the degree of unfettered authority that the UK Chancellor of the Exchequer presently wields.
- The Conservative plan to repeal the Human Rights Act 1998, substituting it with a British Bill of Rights and Responsibilities, and to withdraw the UK from the full authority of the European Convention on Human Rights, if it is proceeded with following the consultation phase, would be likely to have the effect of diluting human rights protection in the UK. Under a federal system, it is normal to have a bill of rights to which all public authorities are subject, which the courts are responsible for upholding. The UK has never possessed a full bill of rights, and though the Conservative Party use this description, the measure they envisage could in practice move the UK in the opposite direction from the attainment of such an instrument. Furthermore, it seems that this change was planned without reference to the impact upon the systems of devolved governance across the UK, and that it might be executed without their consent. A federal approach would necessitate more attention to the system as a whole, and the involvement of the different sub-components within it. Similar observations are possible

regarding the approach being taken to the referendum on the EU, withdrawal from which would seem to require for the present government only a simple majority among UK voters, without the views of the individual territories of the UK being taken into account. The plans for both human rights and the EU could also serve to aggravate the difficulties involving Scotland and its place in the Union, as well as causing difficulties over Northern Ireland and its peace process.

Over the coming months, the Federal Trust will continue to analyse the unfolding government agenda, applying to it and judging it against federal principles. We will discuss how far we can expect individual measures to succeed on their own terms, and explain their relationship to the whole. We will also consider the wider political context within which the government operates, including circumstances involving Scotland and Europe. Finally, drawing on a domestic and international evidence base, we will make concrete proposals for a UK constitution that are a practically realisable expression of genuine federal values.

A Federal Britain in a Federal Europe – a possible double helix?

John Palmer

John Palmer was formerly the European Editor of The Guardian and then a Founder/Political Director of the Brussels based European Policy Centre. He is a member of the Council of the Federal Trust.

“Federalism” can be understood both as a distinctive political philosophy in its own right but also as a system of democratic governance designed to forward a variety of competing, political objectives. In the 18th century debates among the Founding Fathers of the United States about a constitution, federalism was at the core of the democratic philosophy inspiring the American Revolution.

Today, however, the federalist case can be employed in the service of different political causes; including free market liberalism, social democracy and also the programmes of more radical European left wing and Green movements. In the UK, however, it has taken the results of the recent general election in the different UK nations and regions to rehabilitate federalism as a key element in the political debate about Britain’s constitutional future.

Two – superficially contradictory – trends feed this renewed interest in federalism. One is a sense that the UK is simply too big and over weaning to allow for a balanced, socially just development of the aspirations of the peoples in the different nations and regions. But, at the same time, there is a growing realisation that the UK “national” state is too small and too weak to secure the interests of the British people in an ever more globalised world system.

The political upheavals in Scotland have boosted awareness of the unwieldy and politically distorting character of the hyper-centralised UK state. Soon after taking office the new, majority Conservative government accepted that prompt new steps to a much more devolved system of government would be essential to avert the risk of a future independent Scotland and the breakup of the UK.

Meanwhile controversy about Britain’s place in the European Union and the future pace and direction of European integration itself is being driven by critical assessments of the diminishing capacity of the UK to meet the challenges of globalisation on its own. Such challenges are no longer merely

to do with important but narrow economic, trade and investment problems.

Our world is tormented by wars, internal conflict and political repression, as well as by poverty and obscene levels of inequality. We are regularly confronted by harrowing TV images of refugees risking life and limb on the Mediterranean to escape war torn countries in the Middle East or Africa. Meanwhile, on the EU's border, the crisis in Ukraine and fraught relations with Russia raise troubling questions about our own security. Who believes that EU governments can respond effectively other than on a Europe-wide basis?

There is also greater understanding today of the planetary character of climate change and the disasters it presages. But whether it is rising ocean levels or the tidal wave of human victims of conflict and persecution, national states are being tested to and beyond the limits of their capacities. Little wonder that the case for closer European integration - leading to a more democratic and federalising European Union - gets serious attention in other EU states.

How will these two federalist themes interact with each other in Britain in the period ahead? The Conservative majority government seems to realise that the days of the London based UK governance system are limited. We hear rhetoric now from a variety of political interests about the need for a more devolved, even quasi-federal UK constitution.

Scotland is now to be offered further far reaching tax and revenue raising powers on top of those it has already secured. The government will also propose significant devolution of economic decision-making and revenue raising powers to Wales and to the great English city regions.

The government's ideological priorities are clear: force the economically weaker regions and nations to submit to UK determined economic and social priorities by cutting UK determined subsidies and require them to raise their own revenues and determine their own spending levels. This strategy is unlikely to be acceptable to the Scottish government, buoyed as it is by its election success. Edinburgh will not, for example, accept a London right to veto Scottish welfare reforms.

The SNP government will not play its valuable card, a call for a second referendum on independence, too soon. But this card will remain in Nicola Sturgeon's hand for the foreseeable future. It surely will be deployed if the now officially planned referendum on continued British membership in the EU results in a NO vote in England but a YES vote in Scotland - taking Scotland out of the EU against its will.

The strictly UK character of British political parties is also set for change. The Scottish Labour and Conservative parties are talking about their own version of "Home Rule". They are no longer content to be mere subordinate, branch offices of UK parties. The Scottish Conservative Party may change its name to the Scottish Unionist Party and the shock of Labour's near election wipe out is stimulating a similar debate in that party.

The shock waves from Scotland and the prospect of potentially radical further devolution are already triggering intense reflection in both Wales and Northern Ireland. Although the dynamics of devolution and potential independence are different in Wales, Welsh Labour (as well as Plaid Cymru and the Liberal Democrats) want extensive further devolution of decision making powers and a strengthening of the role of the Welsh Assembly and government.

Without major changes to the basis for determining fiscal transfers from the UK government, Wales risks being further disadvantaged by London's existing concessions to Edinburgh under the Barnett Formula. For that reason among others there is a growing Welsh demand for a full scale UK Constitutional Convention before a final settlement is agreed.

Many in Wales believe such a Convention should agree the basis for a federalising UK constitution. In Cardiff there is talk of an agreed protocol setting out the values of "solidarity" which should inspire that constitution and should shape the mutual responsibilities of the Federal UK and its constituent regions and nations.

A possible model for this is provided by the German federal constitution which includes a "transfer union". This sets strict limits to the permitted disparities in the revenues available to the different the German city state and regional governments. Thus where a region has tax revenue per person of 70 per cent of the German average, this can be boosted to more than 90 per cent by fiscal transfers from the wealthier regions.

In the London media little attention has been paid to the impact of developments in Scotland on Northern Ireland. The Democratic Unionists are dismayed at the surge in popular support for the SNP. The DUP is anxious to avoid the threat of major cuts in the subsidies paid to the province from the UK government. But there is no agreement yet with the nationalist and republican parties about the welfare spending cuts insisted on by London as a condition for these transfers.

Sinn Fein and the nationalist SDLP have said little about what a federalising UK constitution might hold for Northern Ireland. Sinn Fein could seek a new referendum on the re-unification of Ireland, but despite demographic shifts allegedly favouring supporters of a United Ireland, this seems improbable for now. After the next general election in the Republic, however, Sinn Fein could find itself in government both in Belfast and in Dublin.

The Cameron government is reluctant to concede the principle of a fully-fledged Constitutional Convention. It would prefer to deal with the different nations and the English city regions on a case by case basis. This approach may be difficult to sustain. Negotiations with the Edinburgh government will be seen as setting a gold standard for devolved powers against which the other nations and regions will judge their own settlements.

David Cameron and George Osborne want to prioritise a speedy transfer of some powers and tax raising responsibilities to the major northern cities. The big Midlands cities now want the same. The cities may not buy the idea of elected Mayors preferring some strengthening of their democratic governance more on the lines of the German city regions like Hamburg, Bremen and Berlin itself. Different arrangements will be needed for the rural and non-metropolitan authorities.

Much will be heard about the case for "an English Parliament". But an English Parliament with a different political majority to a UK government would make it almost impossible to function. It would make nonsense of all elected MPs having the same powers.

Perhaps part of the solution may lie in a root and branch transformation of the second chamber in Parliament from being a House of Lords to a senate-style Upper House directly representing all the nations and regions of the UK whose members could be given scrutiny to check the acceptability of proposed laws to their nations.

The disparities in size and influence between England (especially London and the South East) and the other UK nations and regions make a rapid agreement on these issues let alone a fully federal constitution unlikely. Complex, lengthy and frustrating negotiations between London and the nations/regions seem unavoidable. But the direction of travel does suggest some eventual sui generis federal outcome.

The timing and complexity of the internal UK negotiations about its constitutional future will surely also be complicated by its evolving relationship with the European Union. If there is a majority for withdrawal from the EU as

a result of the referendum, as a result of English votes, the resulting crisis in Scotland and Wales could throw the entire future of the UK into uncertainty.

Even if the 2016/17 referendum results reject British withdrawal from the EU, the likely future evolution of the EU will pose further questions for its future relationship with the UK, even if a fully federal European Union is not immediately on the agenda. But the planned measures to strengthen the Euro-area are about creating a real European economic – and not merely a monetary - union. There are already reports of a Franco-German agreement on closer economic union, which will not involve treaty change for now.

Such developments would raise some highly contentious issues. Foremost among them will be to what extent the EU should become a fiscal “transfer Union” and one with more ambitious aspirations for social and regional cohesion and environmental sustainability. These are issues where some of the UK nations and regions may have very different interests to the London government.

Whatever the future holds, the anachronistic, highly centralised UK governance system can surely not continue for much longer on a business-as-usual basis. The political and social pressures building up within the UK constitutional kettle will be certain to make themselves felt again before long. In the period ahead both the UK and the European Union will have to work out how exactly their respective federalising futures can best intertwine with each other to produce a dynamic and creative double helix for the benefit of both.

Scotland has changed everything

Stephen Haseler

Stephen Haseler is Professor of Government at London Metropolitan University, Director of the Global Policy Institute and a member of the Council of the Federal Trust.

The political revolution north of the border that erupted with surprising speed during the referendum campaign in the spring of 2014, and has now thrown up 56 MPs in the heart of Westminster dedicated to breaking up the kingdom, means that Scottish independence is now more likely than ever before. The fact is that we now have in play a dynamic which serves SNP interests. First, there is the large number of Westminster MPs that now form an impressive launching pad for the 2016 Scottish Parliament elections. Secondly, there is the majority Conservative government, headed by an old Etonian Englishman who will become the almost perfect punching-bag for the nationalists. Every problem will be laid at England's door; every solution will be a Scottish solution. The only question that now remains is: when will the SNP leadership feel that it is propitious to launch the campaign for the next referendum - presumably a pledge they could include in the manifesto for the 2016 Scottish Parliament elections.

Of course, there is one other route to Scottish independence which may also become apparent - should, that is, the European Union referendum witness a vote in Britain to withdraw but at the same time a vote in Scotland to stay. In this eventuality the SNP leadership, who are already on record as arguing that they would not 'allow Scotland to be dragged out of the EU against the wishes of the Scottish people', might well decide to either launch a new referendum for independence - or even go straight-away for an effective unilateral declaration of independence from the steps of Holyrood, the Scottish Parliament.

So, the urgent question arises; can we still save the union? A tentative answer might well be - yes, just. But it will take political leadership of a high order - the kind not seen recently in Westminster - and an inordinate amount of good luck. Above all, though, it will take what will amount to a revolution in thinking for Westminster's political elites. They will need to abandon the habit of a life-time and finally give up the addiction of sovereignty and the allure of centralised power and learn to share power. In sum they will need to understand and embrace the federal idea.

This, though, will be difficult, and not just for the elites. First of all we will need to understand the cause of our present constitutional car crash, a crash that has been decades in the making. For much of the post-war era Britain has remained the most centralised of polities with a unitary unwritten constitution. The country had become so London-heavy that by 1997 New Labour was forced to introduce the devolution experiment. But, as with so much in Britain's piece-meal constitutional history, the changes were too little, too late. 'Devolution' was a typical establishment piece of appeasement. Westminster would graciously grant 'powers' to the provinces, and, of course, because they were not entrenched, could grab them back. As it did with the GLC.

The problem is not only political and constitutional - it is social and economic too, perhaps more so. For some decades past Britain has been subject to great under-currents of social and economic change - not least the recent 2008 global financial crisis, a changing demography and ethnicity, and changing class and regional inequality - an inequality made more acute as the country becomes more and more financialised and income and wealth flows into the city of London and the South-East of England. Yet, all the while these changes have swirled around them the inhabitants of this so-called 'stable' UK polity, particularly us English, have been told, and have often told ourselves, that all is well, and normal. Indeed, we have continued to tell ourselves that our Westminster governance is 'the best in the world'.

Arguably more important than politics and economics is the fact that the UK lacks a federal culture - a federal way of thinking about things. This bias, present in varying degrees ever since the birth of the realm in 1707, has recently been accentuated as media saturation and its concentration in London has grown. It is a bias that sees Scotland, the North, Wales and Northern Ireland increasingly treated as lesser regions, indeed as extras - or even as non-existent: a nice example being the nomenclature of the central bank - this bank for the whole UK being called 'the Bank of England' as though its celtic subjects hardly count.

In sum, the UK system, its 'constitution' and its media culture, have up until now simply been unable to reflect the growing diversity of the country they are supposed to serve.

However, this excessive concentration of power and wealth was bound, sooner or later, to engender resistance outside - and it has now done so with a vengeance in Scotland. And as so often happens with resistance/

nationalist movements as they get underway, basic arguments of accountability and economics mean less and less, and appeals to emotion and dignity more and more.

Things have now reached such a pass that the UK stands on the brink of breakup - and only a radical re-structuring of the polity can save the situation. Such a re-structuring will need to involve a fundamental re-alignment between London and the South-East on the one hand and the rest of the country on the other - nothing less than a break with the unitary, centralised state and its replacement by a federal or confederal system.

However, securing a federal solution to our crisis is not going to be easy; it faces some high obstacles - not least the difficulty in Britain of constitution-making. Piecemeal reform, or 'evolutionary change', is virtually a mantra of the Westminster political class - not surprisingly so. But that means that there is no experience of how to conduct the needed fundamental re-structuring - the constitutional revolution - entailed in entrenching power beyond Westminster in a new constitutional settlement for the twenty-first century. This cannot be done by Westminster, for Westminster is the problem. It can only be secured properly by a constitutional convention followed by a referendum (although Westminster might have a role in setting up a constitutional convention).

Even should we be able to establish an acceptable constitutional convention, there remains one overwhelming issue that could wreck the whole process - 'the question of England'. England is by far the largest of the British nations, and thus, on its face, should England remain a single political unit then any British federation would be unbalanced, well nigh impossible to run smoothly. The two successful federal systems in the west, the USA and Germany, certainly have large states - like New York and California and Bavaria and North-Rhine Westphalia - but none as dominant as England would be in any British federation.

Of course, opponents of British federalism will try to use this as the reason to scupper any federal solution.

Yet, 'England' is not all that it seems. There is a facile idea around that England is 'one nation'. However, although England does indeed exist as a single political unit (that is, for some functions of government), in reality 'England' is essentially a centralised polity imposed on a society south of the border that is highly diverse and regional in character. Indeed, England may well be one of the most regionally diverse countries in Europe.

So, the question remains: what does it mean in the twenty-first century to be English? There was a time, not too distant, when, as the self-regarding maxim had it, to be born English was to have drawn 'the top card in life'. Indeed 'Englishness' had become one of the world's strongest, most confident and most enduring stereotypes and self-images. However, with the passing of empire, and with social change and mass immigration at home, 'Englishness' is now an uncertain identity. The idea of 'Englishness' as a common identity was always largely a rural and southern conception, a product of nineteenth-century aristocratic manners and those who aped them. It had little to do with industrial, suburban and regional Britain that developed over the twentieth-century, let alone with the ethnic changes of the twenty-first. 'Englishness' as a common identity was essentially imposed by an English elite groomed to run an empire - and since the end of the war it has become a source of illusions and myths about ourselves that have served us badly, wholly at odds with our place in the world and the reality of diversity at home.

These myths and illusions help sustain the unreal character of Britain's political realm (still literally a 'realm'), and help explain why our UK state and its Westminster system - unitary, centralised, pompous and hierarchical, and uneasy about mass democracy - no longer fits the changing and diverse society it is supposed to represent.

So, the question becomes: now that Scotland has broken with the Westminster consensus and is showing the way, will Britain's and England's underlying regionalism and diversity begin to express itself - and create a popular movement in favour of regional government?

The key here lies in how the north of England responds to increasing London and southern domination of the kingdom - a domination recently reinforced by the victory (on 37% of the national vote) of the Conservatives in the 2015 general election. In other words, will the north, or parts of it, seek to follow Scotland in distancing itself from London or will it instead cosy up to the south even more fervently?

And what of London? Is there a case for London to follow Scotland's lead? After all, London, because of the profitability of the City of London, makes substantial financial transfers to the rest of the UK, and an independent London (with or without the South-East) would thus be a very prosperous place indeed. Already (in the early summer of 2015) a candidate for Mayor is raising the issue of London becoming a 'City-State' - and arguing that the capital city receiving the exact same 'devolution package' as Scotland. It is a seductive argument.

All in all, the forces of disintegration within Britain and within England are now so powerful that only a federal or confederal solution can hold the UK union together. And in the coming debate about federalism much will depend upon the Scots themselves. For if they decide to stay in the union only a federal structure - with 'Home Rule' powers entrenched in a written constitution - will be acceptable. And should Scotland secure such a settlement it is inconceivable that the English (or the Welsh and Northern Irish) could for long live with a Scotland that has such a super special deal. Again, only a federal outcome could ease what would be an extremely tense situation.

Plan B - Should Scotland Leave

But what if the idea of a federal union for Britain fails, and the Scots finally decide for full independence as a new sovereign state? We live in dramatic times, and it may turn out that in the next few years, no matter how we in England respond, Scotland will decide to leave the union and break-up the country.

Of course this will not be the end of the matter - for the breakup may well not be smooth. Considerable tensions and resentments will remain, not least between the political leaderships of England and Scotland as they negotiate over the separation agreements and over their respective relationships with the European Union and the Euro-Area. Nor should we forget that Northern Ireland's fragile constitutional arrangement will be upset by Scotland leaving - as the province's relationship with the RUK (Rest of the UK) and with Dublin become tenuous again. And sectarian 'troubles' might not be contained in Ireland and could spread to the mainland.

Thus, it would be essential, a matter of urgency, that federalists start working on a Plan B for a post-Scottish independence constitutional settlement - a plan that would try to ensure good relationships between the members of the broken family. This Plan B would need to amount to a re-formulation of the polity of the whole British Isles.

In the event of Scottish independence we would still share some common functions - not least, for a bit, a common currency and a common central bank, hopefully sensitively renamed 'The Bank of Britain'. We would also need to sort out, hopefully without rancour, our relationships with the European Union. If both the RUK and Scotland would be along-side each other as Member States in the EU this would help to ease post independence

tensions - although, unfortunately, such an outcome might not be so easy to achieve immediately.

One way forward would be to create an over-arching confederation between two nation-states, the RUK and Scotland - a confederal structure that might become, say, a mini 'common market'. There would though remain the seemingly intractable problem of what to do about Northern Ireland. Of course, should the UK breakup then both communities in Northern Ireland will become jittery again. The Protestant community may well want guarantees about their status in the RUK that London - particularly should English nationalists be in the ascendant - will not want to give. There will then need to be alternative structures put in place to reassure the protestant people.

One such plan could involve the creation of a loose confederation of 'The British Isles' - in which some new 'states' born out of the collapse of the UK (Scotland, Wales, Ulster, RUK, London) nonetheless join together to form a loose confederation which would become a new Member State of the EU (thus avoiding the difficulty of admitting extra members to the EU).

This kind of plan, or a variation thereof, may be the best that can be done in the chaotic emergency of a collapsed UK. It is a challenging idea, and full of potential pitfalls; but I truly believe that we now need to start thinking radically. For the truth of the matter is that the traditional, evolutionary, piecemeal, reformist, indeed 'Westminster', approach to the constitution has patently failed.

A federal future for the UK? A view from the North East of England

Joyce Quin

Baroness Quin is the former MP for Gateshead East and Washington West, a former Europe Minister and former MEP. She is a member of the Council of the Federal Trust.

Since the introduction of the policy of devolution by the Blair government from 1997 onwards, and the creation of the Scottish Parliament and the Welsh Assembly, there has been much speculation about whether the UK is set to become a federal state with sovereignty formally shared between the central authority and the devolved institutions. Recently however, with the success of Scottish nationalism in particular, there is also concern that rather than the creation of a strong and accepted federal system what we may eventually see is the once unthinkable prospect of the breakup of the United Kingdom itself.

As a supporter of the devolution policy of the Labour government I understood it as a way of responding, certainly, to feelings of national identity in Scotland and Wales but also, equally importantly, as a way of translating the principles of decentralisation and “subsidiarity” into practical effect. Britain was a centralised state and many felt there was a need to decentralise not only to the nations making up the UK but also to regions and to local communities. This would mean taking decisions at the most appropriate level – whether national, regional or local - with the guiding principle of keeping as close to the citizen as possible. This seemed an attractive way forward and a way of enhancing our democratic processes and governance. I still believe that it is possible to create a federal system along these lines but I am concerned that our current situation is leading us into a constitutional quagmire with ill thought out decisions and approaches. It may well be too that creating an effectively devolved and federal form of government – and one which commands widespread support – within the UK will prove very difficult without a written constitution. Simply proceeding in an ad hoc way, with the governing party of the day responding to events and pressures as they arise seems highly problematic and dangerous.

Devolution in the UK so far seems to have been only about responding to feelings of national identity and the debate on federalism – if we can call it a debate – focuses on the four countries of the United Kingdom, seeing each of these as similar and with each requiring a parliament or assembly

with similar powers. I see two big problems with this approach.

The first relates to the population size of England, with over 53 million people compared to 5.2 million in Scotland, 3 million in Wales and 1.8 million in Northern Ireland. Indeed given the population size of England and given its centralised structure I strongly believe that there would be an overwhelming case for decentralising there even if Scotland, Wales and Northern Ireland did not exist! Responding primarily, as the current government seems keen to do, to devolution elsewhere in the UK by introducing a system of English votes for English laws does nothing to tackle England's over-centralisation and paradoxically could make areas like the North East, traditionally much more politically in tune with Scotland and Wales, feel even more marginalised than in the existing system.

The second problem with seeing devolution in the UK in purely national terms is that it fails to respond to the genuine feelings of Britishness within our country built up over the last few centuries. This of course is not a concern to those, like the SNP in the recent Scottish referendum, who favour complete separation but it is a problem to those who feel British as much, if not more, than being English, Scottish or Welsh. Many of us with our mixed heritage identify ourselves as British and like the idea of multiple identities. For myself I am happy to be a Geordie, a Borderer and British! During the referendum campaign I became aware of how deep our common heritage is both North and South of the border, and remember being told firmly on one doorstep by a Scottish voter "I'm not giving up my British passport for anyone"! Furthermore in an increasingly diverse society where we have seen immigration evolve over the last 50 years it is clear that people have come to settle in the United Kingdom rather than to individual countries within the Union. Many of those people and their descendants identify themselves primarily as "British".

Given, too, the result of the Scottish referendum I believe strongly that we need to respond by making the UK as a whole work better and more effectively and not by forgetting the overall framework binding us together.

I used to think that the answer to the "West Lothian Question" was "Gateshead East", the name of my former constituency in the House of Commons. In other words devolving to Scotland should be a process accompanied by regional devolution within England creating assemblies with real powers, including some legislative powers. A proposal to create a North East Assembly was however defeated heavily in the referendum of 2004 and since then regional devolution in England has become virtually a taboo subject. Yet surely there should at least be a renewed debate about region-

al devolution as the referendum was over 10 years ago and held in very different circumstances to those of today. It should perhaps be remembered that Wales rejected the idea of an assembly by a similar overwhelming margin in 1979 and only narrowly approved an assembly in 1997 and yet today the assembly enjoys a level of support consistently higher than in the 1997 referendum.

The campaign to create a North East Assembly – which I remember all too well – failed for many reasons which space does not allow me to describe in detail. With the benefit of hindsight it could hardly have been held at a less propitious moment. The opponents of it rejected it as creating another layer of expensive politicians and, in parading an inflated, large white elephant around the region, were helped, probably beyond their wildest dreams, by two events. Firstly, in the middle of the campaign and for the very first time the details of MPs expenses were published. Since many newspapers added together all the expense allowances (including staff salaries and office costs) and implied that all this money belonged to MPs personally the public reaction was unsurprisingly hostile. Secondly, there was also the news that the Scottish Parliament's headquarters were going to cost 10 times what had originally been forecast fuelling the argument that assemblies would have as a priority the building of palatial premises in which to house greedy and overpaid regional politicians! Importantly too, given that the powers planned for the regional assembly were modest in comparison not only to Scotland and Wales but also to the London mayor and assembly there was a *de facto* alliance between those who did not want an assembly anyway and those who did but who felt that what was on offer was a damp squib which did not compare well with what the Labour government had offered elsewhere.

However even if regional government is revisited in the North East and perhaps elsewhere in England it would be impossible to claim that there is an appetite for it, in equal measure, across England. For that reason devolving in England cannot be a "one size fits all" exercise. There is talk of creating city regions in some areas, county regions in others. There is concern that if either one of these is chosen as a model some areas which do not easily fit into such categories will be overlooked. In the North East for example the Tyne and Wear conurbation might seem a natural city region – although with two cities, Newcastle and Sunderland, rather than one. However the former Northumberland Coalfield area to the north of the conurbation and the former Durham Coalfield area to the south – both areas now largely rural but with an industrial tradition – would understandably fear losing out in such a "city region" model.

Perhaps a more immediate and promising initiative is to be seen in the creation of the North East “combined authority”, set up in the last two years and which is seeking to represent the North East, both politically and economically, at national level. It combines the county authorities of Northumberland and Durham and the urban authorities in Tyne and Wear – Newcastle, Gateshead, North Tyneside, South Tyneside and Sunderland. If such a body can be cohesive and purposeful it could be an effective North Eastern voice, without involving “the extra layer of useless politicians” so derided during the regional assembly campaign. A successful combined authority could help make a regional tier credible and pave the way for more substantial regional devolution at a later date.

What does seem most likely however is that different solutions will suit different areas in England and this will necessitate much careful thought about how the devolution agenda in England should move forward. Central government in seeking to make progress should listen, consult and work for maximum consensus rather than ploughing ahead on the basis of one political party’s views.

Recently in a debate in the House of Lords on this subject there was overwhelming support for the creation of a Constitutional Convention to consider all these issues carefully and to make recommendations. Conservative, Labour, Liberal Democrat, cross-bench, and bishops’ voices were all raised in support of such an idea. The aim would be to strengthen the Union by respecting not only national differences but recognising the needs of regions and localities too and finding a constitutional settlement both within England and throughout the UK which could command the widest possible support.

The prospect that we may end up with a broken Britain and an England weakened and on its own outside the European Union is for me a nightmare. The vision of a Britain, whether officially described as federal or not, committed to decentralisation and subsidiarity, within a robust overall framework, and being part of a European Union also committed to these principles is surely a much more attractive alternative and one well worth striving for.

The UK's territorial and governance challenge: regions, nations and cities

Jo Shaw

Professor Jo Shaw is Salvesen Chair of European Institutions and Director of the Institute for Advanced Studies in the Humanities at the University of Edinburgh. She is a Senior Research Fellow at The Federal Trust.

The UK is facing a period of considerable turbulence in the second half of the second decade of the twenty first century. The UK's future within the European Union looks quite precarious, with a referendum on continued membership slated for 2016 or 2017. At the same time, the EU itself faces some of its most severe crises ever, as the issue of the proper governance of the Eurozone continues to dominate debates and many Member States struggle with stagnant economies, rising unemployment and falling living standards. In contrast to these fundamental issues of economic stability, prosperity and democratic legitimacy facing not just the Eurozone states, but in fact all states in the EU, calls from the UK government for a 'reform' agenda much of which comprises window dressing seem wide of the mark.

Internally within the UK, the debate is also not simple at all. While the Conservatives won a small majority of seats in the May 2015 General Election (and did effectively face down the UKIP threat), they did so without winning a truly convincing percentage of votes, and on the basis of the barest of representations in one of the devolved nations in the UK, Scotland. Having faced down the existential crisis to the UK posed by the Scottish Independence referendum in September 2014, unionist politicians in the UK might have thought that they were looking towards a period of internal political stability, as they settled down, with the participation of the SNP run Scottish Government, to implement the terms of the Vow, and in particular the heads of agreement contained in the cross-party Smith Commission Report of November 2014. Nothing could be further from the truth. Having swept to victory in Scotland in Scottish Parliament elections of 2011, having secured a far higher vote for Yes to independence in September 2014 than any observers or indeed polls had ever predicted (on a higher turnout than ever previously seen in the UK), and having taken 56 of 59 Westminster seats in the General Election in May 2015 (on a turnout five per cent above the UK average), the Scottish National Party feels comfortable in articulating a form of resistance to the mainstream referendum rhetoric which dominates the debate in the rest of the UK.

That mainstream rhetoric sends a message to the EU and the other Member States: In the UK, we are not happy with the EU. It feels remote. We think it is somehow unfair to us. You must reform and concede to us a better deal, or otherwise we will consider leaving. Even the Labour Party now appears to have signed up to this. In contrast, First Minister Nicola Sturgeon's speech in Brussels in June 2015 contained a very different type of message. Yes, the European Union has weaknesses, and we should, for example, see a much clearer focus on protecting people's livelihoods in the context of policies to promote jobs and growth. But this type of reform, like the reforms that the SNP would like to see to the Common Fisheries Policy and energy policy, does not need treaty change and we, the Scottish Government, see no need for a referendum on such a false prospectus.

Consequently, Scottish Ministers feel confident in putting forward two variations to the expected franchise and in making one prediction. The two variations, if implemented, would include within the franchise the two groups who participated in the Scottish referendum but who look set to be excluded this time around. The Scottish referendum was conducted on the basis of Scottish Parliament franchise, that is, it was residence based, excluding all external voters and including EU citizens. This was supplemented to include, for the first time ever in a vote in the UK, 16 and 17 year olds (who will also be able to vote in the Scottish Parliament elections from 2016 onwards). In contrast, the published EU Referendum Bill bases the franchise for the referendum on a modified Westminster franchise, including external voters up to 15 years of absence, plus the usual Commonwealth and Irish citizens, but excluding EU citizens who do not fall into those categories, as well as 16 and 17 year olds. It is possible that in order to sustain the exclusion of EU citizens, whose inclusion would be very unpopular with the Eurosceptic elements of the Conservative Party, the younger voters may eventually be included as the Bill proceeds through the House, and in particular through the House of Lords where the Government does not have a majority. However, it is most likely that the franchise will remain unamended.

Nicola Sturgeon's prediction is this: if the overall outcome of the Referendum is for the UK to leave the EU, but Scotland has voted to stay in, then this would give rise to the sorts of changed circumstances in which it would be reasonable to suggest that there should be a further referendum on Scottish independence. If independence is the only circumstance in which Scotland can retain its EU membership, and its citizens can retain their EU citizenship, then it would seem reasonable to place that question once more before the electorate if they have already voted Yes to staying in the EU. While levels of support for EU membership are only modestly higher

in Scotland than they are in the rest of the UK, the elite discourse on EU membership is utterly different to that emanating from Westminster and the Eurosceptic London media has almost no hold in Scotland (all the 'UK-wide' newspapers run quite different headlines and editorials in Scotland). Such a claim, therefore, looks quite plausible. It has been suggested that a double lock should be extended to all the regions and nations of the UK. In other words, the UK should not exit the EU (as an integral whole) unless there was both an overall vote for exit, plus a 'out' vote in each of the separate nations or regions. The challenges of navigating a similar type of 'double lock' already enshrined in the UK's peculiar constitutional arrangements has already apparently torpedoed the Conservative Government's manifesto commitment to repeal the Human Rights Act 1997 and replace it with a 'British Bill of Rights', at least in the short term.

These reflections bring us back to the unresolved question of political and institutional designs for common living on these islands. The argument is commonly made that while a federal design would work well in theory, dispersing sovereignty to the several peoples of the nations and regions, in practice it cannot work because one component, England, is at the same time too large to be a single unit and also not amenable to splitting up, with devolution to the North East of England having previously been rejected decisively. It has also been observed that the UK's secessionist movement is different to those visible elsewhere in Member States of the EU. Whereas in Belgium and Spain it is the wealthiest parts of the state that seek separate statehood, feeling burdened economically and socio-culturally by the rest of the country, in the UK this is not the case. Scotland is one of the wealthiest parts of the UK now – perhaps for the first time in its history – but like all parts of the UK outside the South East of England and London, it cannot match up on criteria such as average incomes and GDP. Moreover, in the property-obsessed UK, house prices distinguish the South East more starkly than any other indicator. Of course, London and the South East do not represent a homogenous area, with many pockets of deprivation and variations of political culture, and the Labour Party's resurgence in highly educated and ethnically and culturally diverse London highlights that point.

While it may be Scotland that has made the formal request to consider secession, many people right across the UK, and especially in the North of England, often feel that de facto London and the South East of England have already seceded from the rest of us, running an economy based on the power of attraction of a global city that nowhere else on these islands can even begin to match, now that the global city is no longer fuelled from industrial powerhouses in Wales, the North of England and Scotland,

but from the engines of global financial flows. These are the reasons why devolution to cities (and Glasgow should be amongst those which should benefit) begins to look like a more interesting way of fostering the economic growth and prosperity without which territorial tinkering and the assertion of claimed identities based on territories just look like fiddling on the margins, without addressing the real issues.

This, then, is federalism not as a system for dividing powers, but as a manner of thinking about politics. Devolution to cities, and other forms of decentralisation to promote economic growth, can subsist alongside territorially based devolutions to nations and regions. It is a thoroughgoing pluralist approach to notions such as the sovereignty of the 'people(s)', and the democratic legitimacy of institutions. It would inevitably be asymmetric. Different institutions may need to be anchored in different structures to enable effective accountability to the people. It is a way of thinking that also highlights the urgency of calling a Constitutional Convention – suggested as a matter of political convenience by some who feared that we would end up with a Parliament so severely 'hung' after the May 2015 General Election that no effective government could emerge. Of course, that proved to be an incorrect prediction, but the election did reveal intense cleavages across the UK that politicians in all parts of the country would do well to pay heed to. A Constitutional Convention with a strong element of 'ordinary citizen' participation, as in Ireland, could be a first step towards healing some of those divisions.

Wales and the Changing Union

Hywel Ceri Jones

Hywel Ceri Jones is the former Chairman of the Wales Governance Centre, Co-Director of Cymru Yfory (Tomorrow's Wales) and a member of the Council of the Federal Trust.

The decision of the Blair government to introduce devolution in Wales from 1999 was based essentially on recognition of two complementary considerations about the position of Wales in the Union:

- an over-centralised and London-centric decision making apparatus and an increasing distance between the political preferences of the people in Wales and the direction of policy pursued at the UK level; and
- Wales led by its own democratic Assembly would be better placed to address directly the accelerating impacts of globalisation challenging every corner of the world.

The short story of Welsh devolution over the past 16 years has been a mixture of successes and stuttering starts. In 2004 the Richard Commission pinpointed serious flaws in the founding 1998 Government of Wales Act: the separation of the executive and legislative functions, the downsides of adopting a "conferred" model of governance which has led to continuing tensions between Westminster and Cardiff, and the inadequate size and capacity of the National Assembly of Wales.

The 2011 referendum in Wales gave clear public support for the Assembly to gain full legislative powers. Over the past two years, the Silk Commission has produced two unanimous reports which set out a package of recommendations for further devolution, including in particular transition from the "conferred" to a "reserved" model of governance, as had already been the case in both Scotland and Northern Ireland. The effect of this should be that the default position as to whether to devolve a policy field would be determined in Wales. The exception to this would of course be those areas reserved to the Union (e.g. currency and defence).

Most Welsh people readily concur that devolution in Wales has been influenced by the Scottish story of devolution to date. It has been increasingly impossible to avoid Scotland becoming the yardstick for comparison. The referendum in Scotland, its aftermath and especially the recent tsunami of SNP general election results have again underscored the political signifi-

cance of accompanying further devolution within Wales by constitutional changes at the level of the Union itself. More than a year ago, Carwyn Jones, Welsh First Minister, called for a Constitutional Convention to focus on reshaping the Union. He clearly recognised that Wales must engage with this wider debate and not concentrate in isolation on the transfer of further powers to Wales.

The day after the Scottish referendum Cameron's public assurances that he would take steps to ensure "that Wales will be at the heart of the debate of the future of the Union" was, of course, welcome in principle. This assurance can now be read together with the Prime Minister's post election commitment "to renew our union – showing respect to all four parts of our country whilst recognising that we are stronger together in the UK".

The Queen's Speech (26 May 2015) claimed that the government would introduce "far reaching" powers for Wales. However, it is widely appreciated, especially in Wales, that the so-called St David's Day settlement this year emerged from an ultra-cautious behind-the-scenes political compromise resulting in the lowest common denominator of recommendations. These fell well short of the balanced and well informed recommendations of the Silk Commission whose comprehensive implementation had been widely commended.

Moreover, whilst committing to "bringing different parts of our country together", the Queen's Speech was a missed opportunity for the government to set out how it proposes to implement Cameron's latest "vow" – "to renew our Union".

The continuing fracturing of the Union is confirmed by the contradiction lying at the heart of Cameron's narrative. The battle cry which preceded the Scottish referendum - and repeated after the recent election - is "better together". Yet the moves of the government have been entirely bilateral in their thrust - to Scotland, England and Wales in turn - launched in isolation with no overarching vision of the implications for reforming the Union and for the integrity and cohesion of the Union as a whole.

The "one nation" label continues to be the banner headline used by both Tory and Labour HQs though we are patently not "one nation", but four proud nations cohabiting in the UK. The continuing failure of both main parties to confirm that the UK is made up of four constituent nations shows that their narrative will continue to set off on a wrong footing from the word go. If the mobilising project to which they refer is to work for a more cohesive society, characterised by a commitment to social justice and equity, then it would make sense to desist from misusing Disraeli's famous phrase and use new vocabulary.

The imminent prospect of Ian Duncan Smith savouring the £12 billion cuts in benefits which he is now empowered to introduce will serve to fracture the UK even further and reinforce the growing sense of polarisation felt across it as a whole. Moreover, the ideological war which will soon break out in the run-up to the in/out referendum on EU membership will further exacerbate the divides between the populations of our four nations and their very differing views of what the Union should stand for in the EU and the world today. For Wales in particular, a move to exit from the EU would be profoundly damaging, a massive setback precisely at a time when it benefits from a range of EU 2020 policies and funding which strengthen its ability to handle the challenging economic and social agenda it faces.

The alarm bells from the referendum campaign in Scotland, with widespread panic from being so close to the breakup of the Union and the evident failure to articulate a convincing, forward-looking narrative about the Union, its character and role in the world, seem to have gone unheeded. It is increasingly clear that bilateral agreements or isolated initiatives do not provide the basis for a coherent and lasting reform of the Union as a whole. It is time now for the government to depart from disconnected "vows", "concessions" or short term gestures and refashion the governance of the Union, harnessing the talents and energy of the four nations which make up the state in which we live, in the shared interests of all our citizens.

A move towards structural reform of the Union can surely only come if the Prime Minister himself shows decisive leadership to build a cross-party consensus for a new, written constitutional settlement to which all citizens of the Union could be attracted as a renewal of their democratic engagement to a reformed idea of the Union. Establishment of a Constitutional Convention to shape such a settlement, with involvement from civil society drawn from all four nations, as originally proposed by Carwyn Jones, remains the most inclusive formula to preparing the ground democratically.

It is most likely that in Wales there could be such cross-party support for the First Minister's initiative. A recent speech by Leanne Wood, leader of Plaid Cymru, included a call for a confederal Britain. This represented a significant shift of emphasis from previous pleas for parity with Scotland.

Such a cross-party agreement should be constructed upon a bedrock of common basic principles. Drawing on the conclusions of the Changing Union project (a partnership between the Wales Governance Centre, the Institute of Welsh Affairs, and Cymru Yfory; see also ukchangingunion.org.uk) over the past three years, I suggest four common basic principles in this perspective.

i A union state not a unitary state

The new constitution of the UK state would confirm that it is composed of four national entities – England, Scotland, Wales and Northern Ireland - which voluntarily share their sovereignty, expressing themselves democratically through their respective parliaments and assemblies, whose continuing existence would be henceforth anchored in such a constitutional settlement.

ii Commitment to shared solidarity

The last-minute ad hoc “vow” made to the Scottish people unwisely included a commitment to apply the outdated Barnett Formula to Scotland, ignoring the negative consequences in Wales and parts of England, as well as the succession of resounding critiques. This was yet another example of pandering to one part of Britain without considering the implications for the Union as a whole.

What is needed is a one-off settlement with Scotland and the replacement of Barnett by the introduction of a UK wide system for assessing and determining economic and social need, on an objective and statutory basis. Such a system should be set up independent of the Treasury, applied with fairness and consistency to all parts of the Union and open to regular and transparent review and annual reporting. In effect, this would place the commitment to pull together and the promotion of economic and social cohesion as central objectives of the new Union’s constitution. A parallel could usefully be drawn with the political and constitutional commitment of the EU to the principle of economic and social cohesion as a counterweight to the internal market: all parts of the EU benefit from its fruits.

iii Application of principle of subsidiarity

The distribution of responsibilities between the different tiers of governance in the Union should be based on the principle of subsidiarity –whereby the Union does not take action (except in its areas of exclusive competence) unless it is more effective than action taken at national, regional or local levels. Precisely the same principle which the UK has argued time and again should be applied to the governance of the European Union and its relations with its Member States. In this way, the principle would in the first instance apply to the Union itself within a new federated model of governance.

It would be for each nation to determine how to apply the subsidiarity principle within its own borders. It is time for greater trust and action to unleash local and regional energies which have been held back too long

by over-centralisation and to strengthen the sense of collective endeavour. The recent appeal by the leaders of cities from the centre and north of England point clearly to new forms of rebalancing and reforming governance in England.

In the case of Wales, and in view of the Welsh Government's impending overhaul of Welsh local authorities, an all Wales 'pact' could be established to confirm smarter collaboration and clearer lines of decision-making between them and the National Assembly of Wales. The emergence of the Cardiff and Swansea city regions needs to feature strongly in such a 'pact' as, together with the universities of Cardiff and Swansea, they will develop strong hubs for innovation and development in Wales.

iv Tempering the asymmetry of the Union

Anchorage of the new constitutional agreement would be best secured in a federated Union, based on mutual esteem and respect between the four nations and their respective legislatures. The stark reality is that England constitutes 82% of the total population of the UK. In view of its size, and the London factor, it is clear that mechanisms are needed both to recognise and temper the disproportionate effects of decisions made in England. This formula of federating the family of nations in the Union would provide the necessary framework to temper its internal asymmetry, given the very different population sizes involved. To promote and safeguard the values and integrity of the Union as a whole, this framework should be underpinned at the level of the Union by the introduction of two important reforms:

- a). Reform of the present House of Lords as a second chamber, drawing on elected representation from the four nations and other designated regions, with the responsibility to monitor the fair and effective functioning of the Union, both internally and externally in relation to the Union's role in Europe and the world.
- b). Revision of the existing intergovernmental machinery between the different legislatures, now widely regarded as inadequate and opaque, with the introduction of a joint Ministerial Council charged to oversee the effective functioning of cooperation between the four national legislatures and identify problems arising from the impact of policy initiatives taken in respect of one jurisdiction on the rest of the Union.

Following the experience of the last general election, the likely recasting of the Tory and Labour highly centralised operations to create a more federated organisational structure, especially in Scotland and Wales, could

help connect them much more persuasively with their populations, help rid themselves of their London-centric tags and avoid confusion in the public mind about their relevance to the different national contexts.

The long term future of Wales and its development is at stake as the government moves to reform the Union and begins to organise its referendum on EU membership. In Wales, we urgently need to raise our game and demonstrate that improvements in governance nationally and at the level of the Union can unleash the creative energies and talents of Welsh people to transform the challenging social and economic situation. The UK government now needs to engage rapidly in constructive dialogue with the Scottish Parliament and the Welsh and Northern Ireland Assemblies to determine cooperatively the ways ahead.

This collection of essays has been published in memory of the Federal Trust's former chairman John Pinder OBE. Its authors are Senior Research Fellows and Council members of the Federal Trust who are offering their contributions to the evolving debate on federal structures for the United Kingdom:

Stanley Henig

Dr Andrew Blick

John Palmer

Professor Stephen Haseler

Baroness Quin

Professor Jo Shaw

Hywel Ceri Jones

ISBN 978-1-903403-96-9



9 781903 403969 >