

[logo]

Federal Britain

No longer unthinkable?

JOHN BARNES

WITH CONTRIBUTIONS FROM
FERDINAND MOUNT, NOEL MALCOLM
AND LORD ALEXANDER

CENTRE FOR POLICY STUDIES
57 Tufton Street, London SW1P 3QL
1998

THE AUTHOR

John Barnes has been a lecturer in British Politics at the London School of Economics since 1964. He has been a Conservative Prospective Parliamentary Candidate in the General Elections of 1964, 1966 and 1970. He was a councillor on Greenwich Borough Council from 1968 to 1973; on Kent County Council from 1973 to 1989; and currently serves on East Sussex County Council where he is Chairman of the Education Committee.

He is co-author of *Baldwin: A Biography* (Weidenfeld & Nicolson, 1969) and co-editor of *The Leo Amery Diaries 1896-1929* and *The Empire at Bay: the Leo Amery Diaries 1929-45* (Hutchinson, 1980, 1988). He is also the author of *The Conservative Party since 1945* (Blackwell, forthcoming).

Acknowledgements

In addition to acknowledging the efficient editorial resources to the Centre for Policy Studies, the author would like to express his warmest thanks to Oliver Knox for his help in sharpening the message of the original Conference paper on which this essay is based.

Support for this publication was given by the Institute for Policy Research.

The Centre for Policy Studies never expresses a corporate view in any of its publications. Contributions are chosen for their independence of thought and cogency of argument.

ISBN No. 1 897969 70 8

© Centre for Policy Studies, January 1998
57 Tufton Street, London SW1P 3QA

CONTENTS

Preface by the Rt Hon Michael Ancram MP

The Argument

1. The dangers of drift	1
2. A Spanish lesson	5
3. Problems of party	6
4. The English question	9
5. Finance, taxation, representation	11
6. Maps of loyalty	14
7. Federalism: truths and untruths	20
8. Parliamentary decay	26
9. The boon of subsidiarity	31
10. Who gets what	37
11. Majoritarianism run mad	40
Conclusion	44
A Reply by Ferdinand Mount	45
A Reply by Noel Malcolm	50
A Reply by Lord Alexander	54

PREFACE

BY THE RT HON MICHAEL ANCRAM MP

THE TIME HAS COME to debate the British constitution. For one thing is certain. When the Conservative Party gets back to power we will not find the constitution as we left it.

It will have been changed in a number of respects: we shall see a Scottish Parliament; we shall see a Welsh Assembly; we may well see changes in our voting system; we may well see reforms to the House of Lords; we shall certainly see a different system of government in London. We shall be some way down the road of regionalisation within England; the Labour Party, in its recent White Paper, has made it clear that it is setting up regional development agencies not for their economic benefit alone, but because they will form the basis of a democratic regionalisation of England itself in the future.

So I welcome this pamphlet which so expertly examines the problems which are mounting up on the constitutional front. However, while I share John Barnes' fears for the future of the Union, I remain to be convinced of the case for federalism. In his paper, he undoubtedly asks the right questions. But is federalism the only, or the best, way to preserve the Union?

There are no easy answers. In four or five years time, when the Conservatives are next in a position to do something about it, we may well find that the course of devolution and regionalisation has run a very long way. So we must be prepared to think the unthinkable.

We should not seek definitive answers now, but now is the time to begin the debate. In three or four years time it will be our duty to pick up the pieces arising from the uncoordinated constitutional reforms being carried out by this Labour Government, and to try to repair the dreadful damage which will have been inflicted upon the Union. That will require the fresh thinking which is embodied in this pamphlet.

THE ARGUMENT

FEDERAL BRITAIN ARGUES THAT Tony Blair's Government is destabilising the political and constitutional framework of the United Kingdom, by devolutionary shreds and patches. No prospects are offered of a coherent new constitutional framework. Instead, the "politics of territory" threaten the integrity of the Union. Competition for resources, inherent in the proposals, will breed conflict.

Similarly, efforts to rebalance the constitution by devolving powers to the English regions must lead to a creeping decentralisation: a dangerous game in which English nationalism may itself take a hand.

Yet the paramount interests of Scotland, Wales, Northern Ireland and England are to stay part of a strong and united Kingdom. The arguments are especially cogent in the light of a possible development of the European Union into a Europe of the Regions, instead of the present *Europe des Patries*.

Material considerations may not be enough by themselves to hold Britain together. We must build a new, codified constitutional framework while sentiment within the country remains in favour of maintaining and strengthening the Union.

Recognition that the traditional concept of Parliamentary sovereignty no longer adequately reflects the wishes of the sovereign people is the first step. We have to devise a framework which does. The central question may prove to be not whether to move to a federal structure, but whether that federation is based on existing nations or artificially created regions. In the context of both Britain and the European Union, an arrangement based on provincial parliaments for England, Scotland, Wales and Northern Ireland would be more soundly based and would, in turn, enable local government to be strengthened. The new constitution would recognise and enforce a proper dispersion of powers to provincial parliaments and to local government, while establishing a clear role for a federal United Kingdom government. That role, which would include defence and foreign policy as a matter of course, would allow us also to co-ordinate better our approach to the European Union.

Given a real effort to establish subsidiarity and to espouse limited government, the consequent benefits of such a constitution, in terms of liberty alone, should encourage Conservatives to support it.

Yet the overwhelming argument is prudential: a recognition that the Government has unleashed forces which it does not understand, and which must be brought within a new constitutional framework if the United Kingdom is to endure and to prosper.

CHAPTER 1

THE DANGERS OF DRIFT

DEVOLUTION FOR SCOTLAND AND WALES is now a certainty. So we must consider the effect of these reforms and look for ways of making them less disruptive of the Union.

The main purpose of this paper is to demonstrate that the right federal constitution for the United Kingdom is now the best way to preserve and strengthen the Union. Further, it argues that there are benefits in applying the principle of subsidiarity to the United Kingdom as part of the new constitutional arrangements; and that another advantage would be a more explicit, less flexible and capricious constitution.

There is a danger that, rather than grasp the nettle, those who are by temperament conservative will see the Labour Government's reforms not as a botch but as one more stepping-stone in the evolutionary development of the British constitution, no more anomalous than any previous compromise. After all, Northern Ireland enjoyed devolved government from 1921 until 1972 and no one questioned the right of Ulster MPs to sit and vote in the UK Parliament. It may be that the number of Scottish MPs will not be reduced for another decade, but can we not live with that? There is (as yet) no reason why the English may not be able to put up with such a compromise, although some English MPs will certainly take up the cause of England (whether out of conscience or simply in pursuit of political fortune).

Yet that is not the only danger. The main one to be feared is that, if we just wait and see, the forces making for the disintegration of the Union may gain such a hold that there will be no going back. No skipper with his ship on a lee shore waits to see if the wind will remain hostile.

Some brief lessons from Ireland

The United Kingdom must be under no illusion. Although the Scottish Parliament and the Welsh Assembly bear some family resemblance to Stormont, the situations are not the same. There, a minority looked to the south of the island where a secessionist movement had already been successful in gaining independence and sought (not always strenuously, it should be noted) to bring about a unified Ireland. Faced with a southern Irish State, whose constitution set out its claim to the north, and with a substantial minority of its citizens who endorsed that claim, the Northern Irish government was not going to do anything which would drive a wedge between itself and its parent government. For its part, the UK government balked at interfering in the affairs of

FEDERAL BRITAIN

Northern Ireland despite much evidence of discrimination, mainly at the level of local government, against the Catholic population.

Looking back, we may be amazed that the situation held for 50 years. Once disorder broke out, the UK government was drawn inexorably to the point where it had to resume direct rule. Not unnaturally, since most Unionists were not at heart devolutionists, they did not resist. These circumstances do not correspond in any way to the situation in Scotland.

We must be wary therefore of drawing too many lessons from Northern Ireland. But it is worth noting that constitutional authorities differed over the right of the UK government to intervene and the judges were driven to draw on Canadian experience – that of a federal state – when addressing the legislative competence of the Northern Irish Parliament.

Both Scotland and Wales generate independence movements, but they look not to another country, but to the independence of their own; and in Scotland, at least, such ethnic, religious and social cleavages as exist do not correspond with the divisions between those who want full independence and those who are content with Home Rule. Both Nationalist parties see devolution as an important step on the road to full independence.

Such lessons as can be drawn from Northern Ireland do not induce optimism. In Wales for example, where perhaps half the country preferred the existing constitutional framework, there are likely to be growing tensions over the use of the Welsh language. Continuing divisions over links with England could take on a party character. However, the United Kingdom government is not likely to risk provoking a growth of Welsh nationalism by resuming the government of Wales, much less suggest partition.

The instability inherent in Labour's proposals for devolution

The critical question for those who are prepared simply to accept this new constitutional settlement is: how stable is it? About the only real sign of hope is the decision to adopt proportional representation for the elections to the Scottish and Welsh bodies. Although this may not make for strong or accountable government, dissatisfaction with Scotland's lot in the United Kingdom is not as likely to lead to a one-sided result in this as in a system of majoritarian voting. Beyond that, there is little cause for optimism. Although rather more revenue-raising powers have been given to the Scottish Parliament than is apparent at first sight, the restriction on the amount by which the level of income tax can be varied means that the bulk of Scotland's spending will still be financed out of UK taxation. Consider the political implications. The least likely perhaps is that the government at Westminster will be unable to resist the temptation to use its financial clout to influence the spending priorities of the devolved government. The decision to give Scotland a block grant may well help here. Nevertheless it is salutary to recall that in the financial negotiations between the Northern Irish government and the British Treasury, once it had become clear that an

THE DANGERS OF DRIFT

annual subvention was needed, pressure was undoubtedly brought to bear on the former over the standard of public services in the province. The principle established was one of parity, but that concept was subject to considerable disputes over interpretation. In practice the financial autonomy of the Northern Irish government was seriously qualified since the bulk of its finances came not from the transferred taxes, but from Westminster. They were the subject of annual haggles.

Professor Vernon Bogdanor, when he studied the relationship in pursuit of insights into the possible workings of devolution, drew attention to the problems which the Northern Irish finance minister had in planning ahead, when he was so dependent on the British Chancellor of the Exchequer. But his major criticism of the arrangement was that the Northern Irish “government was responsible not to the legislature, but to the United Kingdom Treasury.”¹ He quoted Wallace’s verdict that:

...neither Parliament exercises sufficient scrutiny over the financial relations between the two governments.²

He noted that this not only meant that the arrangements were shrouded in secrecy, but that they were “hardly conducive to efficient, democratic government.”³ At first sight the Barnett formula, which is referred to in the Government’s White Paper, is more robust than the principle of parity. However, the arguments which rage about whether Scotland gives more to the Exchequer than she receives in public expenditure have brought it under serious question.

Which brings us to a more likely source of difficulties: the constant temptation for the Scottish National Party, perhaps aided and abetted by the Liberals, to demand more from the UK government than it is willing to give. Essentially, the cry will be that since the British government will not concede Scotland independence, it must take the responsibility for meeting Scotland’s needs. There are powerful reasons for supposing, for example, that Scotland’s health problems are more serious than England’s; and, that if they are not addressed successfully, there will be demand for more resources. Shroud-waving, an activity not unknown to the National Health Service, will take on nationalist overtones and it will always be possible to suggest that the government at Westminster, English-dominated, is spending money elsewhere which could be much better spent on the needs of Scotland. There is a real danger that in ceding so much legislative power to the Scottish Parliament and such a wide range of powers (including ones over local authorities), while retaining so great a control over the purse strings, the Blair Government has created a recipe for continual conflict.

¹ V. Bogdanor, *Devolution*, (Opus/Oxford, 1979), p.61.

² M. Wallace, ‘Home Rule in Northern Ireland: Anomalies of Devolution’ in *Northern Ireland Legal Quarterly* (1967), p.161.

³ Bogdanor, p.62.

FEDERAL BRITAIN

In Scotland and Wales the pressures which have led to devolution derive from the existence of substantial non-Conservative majorities in both countries during a prolonged period of Conservative rule at Westminster. Even with Labour majorities in both Westminster and Scotland, tension is likely. But there are plenty of other scenarios in which conflict may erupt. The first is where a Scottish Nationalist government emerges with no incentive at all to compromise. Even if that does not happen, the governments in Edinburgh and London will not always be of the same political colours. Imagine the incentive for the former to shift the blame to the latter wherever it seems credible to do so! There may also be calls from interests in Scotland for intervention from Westminster when their own interests are jeopardised. It was the representatives of the minority community in Northern Ireland that invoked a more active policy towards the province from the Wilson Government in the 1960s.

In some ways, however, Wales presents a more immediate problem. Although charges that her assembly-to-be is no more than a talking shop are exaggerated, there are already signs that a movement to increase its powers will accompany its creation. Resentment that the Scots have been treated as being more responsible will be the principal weapon of those pressing the case. It is a cry that is likely to grow louder should the English regions ever be accorded anything more than consultative chambers. Nor can one ignore the possibility that if directly elected regional assemblies are created in England, they too will join the hunt. The persistence of the “West Lothian problem” (to which we shall return) will inevitably add to the pressure. It affects Wales as well as England, and the discrepancy in powers will irk.

If, after this, some still think drift an option, they should consider what has happened in Spain.

CHAPTER 2

A SPANISH LESSON

IN SPAIN, THE TERRITORIAL ENTITIES to which powers have been devolved progressively since 1978 were not intended to have identical powers, but the hope that they might be content with that situation has been disappointed. Those who struck the initial compromise in the constitution clearly hoped that some provinces at least would not seek to go down the devolutionary road. In fact, within four years all had done so. The only subsequent check on the process of rolling decentralisation has been the central government's realisation that ten out of the 17 units could not be expected to take on the most expensive responsibilities, health and social security. In every other respect, by 1996 the autonomous regions enjoyed identical powers. Eight have actually established departments to conduct their own external policy. More worrying, in what is explicitly not a federal constitution, the desire of certain historic entities to re-assert their difference from the remaining provinces has led them to seek ways of carrying the process of decentralisation still further. Even the most generous measure of devolved power has not fully satisfied either the Catalonians or the Basques. The Galicians, once quiescent, have become more demanding in the wake of these potent examples. Catalonia particularly looks to use her leverage in the national parliament to secure additional devolved powers. The lesson is surely the need to avoid competition in a process of rolling decentralisation. However, precisely that unsatisfactory process is built in to the arrangements envisaged by the Labour Government and its Liberal Democrat echo.

Another lesson that can be drawn from Spain concerns the distribution formula by which central resources are allocated to the autonomous regions. This has become politically charged. In Britain, a pale echo of this conflict can be heard in the disputes over the calculation of block grants to local authorities. Fortunately for the government, perhaps, the mode of calculation has been so arcane that most elected politicians have treated it as a new variant on the Schleswig-Holstein question. Even so, the pressures on local government finance have now become so great that, but for the institution of capping, the debate would have become fiercely political. When it comes to provincial governments, the demand to make the formula used to allocate central funds more transparent – and thus even more fiercely debated – is not likely to be resisted.

When taken together with the English scenarios sketched above, this confirms that drift, however attractive to some traditionalists, is not remotely an option.

CHAPTER 3

PROBLEMS OF PARTY

ONE CONSEQUENCE OF DEVOLUTION that has so far had little analysis is the potential effect on party structures. If the Conservative party hopes to compete seriously in the Scottish elections, it will have to distance itself from the English end of the party and take on a Scottish character different from that of the traditional Scottish Tory party. Inevitably it will have to adopt a federal structure to do so. The same may well be the case in Wales, although there the process is likely to take rather longer.

The effects will not be confined to the Conservative party. The Scottish Labour party already has a distinctive character and is much more likely to pursue old-style Labour policies, thus distancing itself from New Labour and making it more difficult to justify loading the burden of these policies on to the rest of the UK. Again it is probable that Westminster MPs representing Scotland, given the absence of any great interest in much that comes before the Westminster Parliament, may become a pressure group for their own country, thus distancing themselves from their party. Efforts will be made by some in Scotland and, to a lesser extent, Wales to nudge them towards this role. Similar efforts are already made by English local authorities to use their MPs collectively in order to lobby the government about the effect on budgets of the annual financial settlement for local government. But if Scots and Welsh MPs can act collectively they are likely to prove more successful through their greater numbers. This in turn will breed English resentment.

The democratic authority of the Scottish and Welsh assemblies

If we consider devolution, wearing political rather than constitutional spectacles, power devolved, *pace* Dicey, is not likely to mean power retained. On the contrary, a new locus of power will be established in both Scotland and Wales. Differences will be considerable in the amount of power conceded to the two assemblies, and in practice the Welsh will probably find it harder to flex their muscles. Nevertheless both bodies will have a strong democratic mandate. They will certainly have an excellent claim to represent Scottish and Welsh opinion, one which is likely to be taken more seriously than any contrary view expressed by the putative “Uncle Toms” representing those countries in Westminster. Almost certainly they will supply a base to ambitious politicians who will want to use their powers to the full and, where necessary, extend them. Any attempt at restraining them is likely to unite Scottish and/or Welsh opinion. There is a real danger that nationalist parties might exploit any conflict with a London-based government. It was virtually

THE PROBLEMS OF PARTY

impossible, short of suspending Stormont, for London to exert ultimate control over the government of Northern Ireland and, in the case of Scotland more particularly, it will surely seem dangerous for the Westminster government to provoke rampant nationalism. Formally the power will be there but good arguments will always be to hand against its use. It can be anticipated therefore that the Scottish Parliament will rapidly come to bear an uncanny resemblance to a province in a federal state. By convention rather than rule, Westminster will be reluctant to seek influence in Scottish affairs.

Writing about devolution in the context of the much less significant legislation intended in the late 1960s, Bogdanor, now Professor of Government at Oxford, foresaw the emergence of a quasi-federal form of government, certainly in Scotland and probably in Wales also; he noted that:

...political authority depends upon its regular and continuous exercise; it is not the mere incursion of legislative authority once every ten, fifteen, or twenty years.

He argued that in these circumstances the assertion of supremacy would become, to quote Enoch Powell, “so empty that it could eventually be given effect only by what would in reality be a revolutionary act”.

The distinction between federal and quasi-federal constitutions

Politicians in search of solutions to practical problems generally fail to distinguish clearly between federal and quasi-federal solutions. The former involves the division of powers while the latter, as in the current proposals for Scottish devolution, reserves to the sovereign power the right to strike down what has been granted. That this is no idle distinction is clear from what happened in 1972 when the Stormont Parliament was abolished. The formal reservation of sovereign power may not be effective, however. Even before the repatriation of the Canadian constitution, it was clear that the existence of the British North American Act did not really give the British Parliament any power to take unilateral action where Canadians were concerned, nor, to venture into the realms of Alice in Wonderland, does the existence of British legislation asserting continued sovereignty over the United States have anything other than antiquarian significance. Although one can imagine times when the distinction may have practical significance (and the necessary clause or clauses may find a place in the current legislation), the difference will in practice mean far less than most academics suppose. Although Britain's continued sovereignty over Southern Rhodesia gave her the major role when UDI was brought to an end, it was scarcely of any significance in bringing it to an end. The truth is that force is usually the only practical weapon against acts of secession. The Wilson Government was no more able to use its 'sovereign power' to maintain the Sunningdale regime in 1974 than its predecessor was able to put an end to Southern Ireland's successful revolt in the years 1919-21.

FEDERAL BRITAIN

The best example is Northern Ireland. If, by some fortunate chance, a durable arrangement emerges by which devolved power can be restored to the province, it is not easy to envisage circumstances in which the Westminster government will wish to intervene in its affairs. It will fear to destroy what is bound to be a precarious balance and, again, rightly be reluctant to encourage a mode of politics in which one side or another is for ever appealing to bodies in England. Devolution here will work only if the various parties are ready to settle their own differences. A quarter of a century's entanglement through direct rule must induce great caution about the possibility of precipitating a situation in which it should again be on the cards. It is conceivable that the lesson will not be drawn in respect of other parts of the United Kingdom where the tensions are less acute; but it is inconceivable that memories will ever fade where Northern Ireland is concerned.

Given these considerations, no one can readily suppose that the "just and fair settlement within the framework of the United Kingdom", which is how the Blair Government describe their proposals for Scotland, is likely to hold. It is inherently unstable. Nor will the Welsh be content with their lot.

CHAPTER 4

THE ENGLISH QUESTION

BUT THE MAIN PROBLEM, as the Government half recognises, is how to deal with England. Its answer – indirectly elected Regional Chambers to co-ordinate transport planning, economic development, bids for European funding and land-use planning – clearly does not go far enough to satisfy those critics who are worried about the “West Lothian question”. It is insufficiently democratic to meet concerns over the accountability of existing Quangos, such as the new Regional Development Authorities.

The problems with Regional Chambers in England

Local authorities see the Chambers as a potential threat should they pass out of their control; more importantly, without the discipline of direct election, the proposed Chambers can only develop in one of three ways: all unsatisfactory. Most likely they will degenerate into rather ineffective and expensive talking shops. Or they will provide a formal framework within which some complex log-rolling can take place. Or finally, they might develop a degree of independence from their parent authorities and a distinct regional approach. In this last case particularly, an early demand can be expected for the Government to honour its pledge to legislate for referendums, region by region, to see if there is support for an elected regional assembly. The relationship between these bodies, parliamentarians in the relevant areas, governmental regional offices and existing Quangos has been left vague. It is difficult to see how a directly elected regional assembly could be anything other than a perennial source of confusion.

Part of the Government’s problem is that there is little public enthusiasm for regional assemblies. Even when confused by the combination in the same poll of support for regional assemblies and support for self-government in London (not at all the same thing), a majority of those expressing an opinion came down against regional assemblies. If London had not been drawn into the argument, the majority against would probably have been greater, as it was in the State of the Nation poll in 1991. But, if we assume that the Government’s programme results in some directly elected regional assemblies, would that increase the overall stability of Labour’s new constitutional settlement? The answer is, almost certainly, No. Rolling decentralisation, as with Spain’s regions, is likely to lead to competition to gain powers from central government in the pursuit of regional self-interest. Major elements in the North East are fast moving towards “A Declaration for the North” favouring an elected regional assembly with its “capital” in Newcastle. One of its leading advocates has proclaimed: “we are happy to see ourselves in terms of a region of

FEDERAL BRITAIN

Europe rather than a region of England.” Another wants “an accountable assembly with power and ability to make decisions and spend money – not just a talking shop.”⁴ Nor is it likely that local government in regions where devolution takes place can be unaffected. Ultimately, the consequences for the central government and for MPs at Westminster would have to be faced.

Lord Hailsham was right when he warned: “You cannot have local assemblies with jurisdiction concurrent to that of Parliament.” While this in theory was what took place in the Stormont system, in practice conventions operated on both sides “as if it were a federation which in fact it was not” and in the event the permanent majority at Stormont was determined to get on with Westminster and the minority largely opted out altogether. Hailsham argued that:

If you have devolution, you must actually devolve powers from Westminster, and this means defining the frontiers of jurisdiction as in the United States, as in Canada, as in Germany, as in Switzerland, between what can be done by the central government and legislature, and what can be done by States, Provinces, Cantons or whatever you choose to call the federated parts. The whole must be policed by the courts...⁵

This, as he might have pointed out, had already happened in regard to Northern Ireland and it is worth noting that judges in that context had explicit recourse to Canadian precedents.

The potential dangers of English nationalism

The major danger to the Union is to be found in the English response to devolution. While the nature of that response is difficult to forecast, the prognosis is not bleak. Some Conservative MPs have already asserted that England needs its own parliament. More than Scottish and Welsh nationalism, English nationalism has remained submerged in loyalty to the wider British entity. One can note the ease with which Englishmen use the name England when referring to Britain. While there is little *immediate* danger of a resurgence of English nationalism, there is the probability that politicians or extremists will emerge seeking to stimulate it. Scottish and English nationalism may feed off each other’s campaigns. A prudent conservative will expect the worst. Whether in Yugoslavia, Belgium, Northern Ireland, wartime France or pre-war Germany, good nature has proved less deep-seated than one might hope. In the United Kingdom, the two-party system has given some protection against the growth of extremism, but one of the safeguards of that system – majoritarian voting – is now under threat.

⁴ Respectively leader of the Newcastle City Council and the chairman of the Local Government Association. Quoted in C. Byrne, ‘Geordies call for North East independence.’ *Sunday Telegraph*, 2 November 1997, p.23.

⁵ Lord Hailsham, *The Dilemma of Democracy: Diagnosis and Prescription* (Collins, 1978), pp. 167-8.

CHAPTER 5

FINANCE, TAXATION, REPRESENTATION

IN DEVOLVED POLITIES, there are always going to be major problems over taxation and representation. Taking finance first, there are really only four options. The first, the course actually proposed for Wales, is that the assembly should be financed entirely by way of a block grant. At the other extreme the devolved legislature could be left to rely entirely on revenue raised by itself. It might even be asked to raise its own share of UK expenditure on such matters as defence. In the middle lie two possible alternative courses of action. The first involves a mix of grants and assigned revenues with limited power granted to the legislature to vary the rates of the latter. The other authorises the devolved parliament to raise some taxes of its own to supplement grants from the centre, possibly with some revenues assigned also. Unless specific revenues are transferred to the devolved parliament, there will be rows over the size of the national contribution to the devolved budget, with an endless search for formulae which attempt to hold the balance between one segment of the UK and another. In Spain where the autonomous regions control a smaller percentage of GDP than the French regions, extensive borrowing powers were conceded and, not surprisingly, debt escalated. The powers of regional treasurers were reined in, but in the run-up to EMU tension between the central government and the autonomous communities is still high. There are also problems over the formula governing budget transfers, which was based on a whole series of variables, including population, area, migratory balance, sparsity, insularity, relative poverty and resources. It was agreed that it should be revised every five years to allow for a degree of stability in financial planning. But failure to agree on the distribution formula delayed the proposed transfer of 15% of income tax revenues to the regions in 1992 and a settlement had finally to be imposed in October 1993 in the teeth of opposition from Galicia, the Balearics and Estremadura. Continual arguments rage over the weighting to be given to each factor.

Potential fiscal tensions in the UK

Similar tensions are rising in the United Kingdom over the so-called Barnett formula. Although Scots may contest the claim, it is clear that on the most readily available figures the formula is out of date. In terms of GDP per head Scotland ranks as the fifth most prosperous region in the UK, ahead of the West Midlands and the South West (as well as more obviously less favoured regions).

FEDERAL BRITAIN

Average GDP per Head, 1995

London	£12,503	West Midland:	£9,649
South East	£11,231	North West	£9,255
East	£10,991	Yorkshire	£9,166
East	£9,926	North East	£8,689
Midlands			
Scotland	£9,873	Wales	£8,440
South West	£9,663	N. Ireland	£8,440

Scotland's GDP per head is still below the average for the United Kingdom, but at 97% of that average, it is much better off than, say, the North East (which has 83% of the UK average). A quarter of a century ago Scotland was 10% below the average. In terms of identifiable government expenditure Scotland in 1995/6 received £4,614 per head of population, more than Wales at £4,352 per head and far more than the average for England of £3,743. Only Northern Ireland (£5,139) gets more. It is little wonder that the Chairman of the North East Development Company complains that the Barnett formula is "no longer necessary or just". Figures for family credit, income support and unemployment tend to confirm this claim. Since the Government refused to address itself to the issue – much less change the formula before the Scottish and Welsh referendums, the outcry if it did so now can be well imagined. The anomalies are startling enough for the Treasury select committee to determine that they should come under examination.⁶

Without exception the bodies dealing with regional development in England have criticised the present distribution of public money; Paul Davies, Director of South Western Enterprise has called for a Royal Commission on the matter. At the same time the Prime Minister has called upon the DTI to prevent wasteful competition for inward investment. A battle royal is in consequence being waged between the Welsh Office and the DTI. Since membership of the European Union means that everyone should be operating to common rules, it will be hard to shirk greater transparency, and the fuelling of a sense of grievance amongst the losers.⁷

The over-representation of Scotland at Westminster

The continuing presence of Scottish MPs in the House of Commons will be another running sore with the English and Welsh; and a source of potential trouble will be how the financial settlements for Scotland, Wales and Northern Ireland are decided. No devolved country will be content to be under-represented on such matters. At present

⁶ *Financial Times* 1/2 November 1997, p.1.

⁷ For commentary see J. Groom, 'The Disunited Kingdom' in the *Financial Times* 1/2 November 1997, p.7.

FINANCE, TAXATION, REPRESENTATION

Scottish MPs sit in disproportionate numbers. While this was justified by the need to give Scottish MPs' constituencies of a manageable size, that argument is much less cogent with the devolution of the bulk of constituency business to Edinburgh. Worse still, Scottish MPs unable to vote on devolved matters will still be able to vote when it comes to purely English business, or on Welsh legislation. This is patently unjust. The argument, already used by ministers, that this was the case when Stormont was in being is a clear example of the proposition that two wrongs cannot make a right. With the present Labour majority in the Commons it may make little practical difference, but it will be a different story if, after the next election, Blair is in office by virtue of the presence of those Scottish MPs.

To eliminate representation from the devolved area, as Gladstone initially proposed for Ireland, is wholly unacceptable, but implicit in what has already been said is the unpalatable conclusion that the proposed compromise of reduced representation does not resolve the problem. In fact it makes for a double unfairness. In matters where a devolved parliament or assembly does not have power, and especially where the settlement of the central contribution to its policies is at stake, the country concerned will feel that, with less than equal representation, its views are at a discount. That may not be too bad when members of the same party dominate both the UK government and the Scottish Parliament, as they do at present. In effect Scotland then enjoys virtual representation, the more so if, as is now the case, Labour's front bench is dominated by Scots. However, when the Conservatives re-emerge as governors of the UK, the resentments will be dangerous, and grow. Equally if English affairs are settled by the Labour party on the basis of a contingent of Welsh and Scottish MPs, it not be long before some English demagogue exploits the grievance.

One need only consider the comparable resentments felt in Scotland over eighteen years of Conservative rule at a time when there was a steadily declining number of Scottish Conservative MPs in Westminster, or imagine the outrage if, in February 1974, Heath had extended the whip to Ulster Unionists of all kinds (which at least some of his party wished him to do), and had as a result been able to take office.

The Government is therefore creating an inherently unstable constitutional apparatus with powerful incentives for nationalists of one variety or another to exploit the situation to the full. There must be a danger that many English supporters of the Union will now wonder whether England could not now go it alone. Scottish and Welsh Nationalists will encourage the development of such feelings. That would be a tragedy.

CHAPTER 6

MAPS OF LOYALTY

THE ENGLISH OFTEN SEEM to equate England and the Union in ways which lead to resentment from their fellow Britons. It is acceptable perhaps that Glamorgan men play for England at cricket, although in rugby and soccer, as Tony Banks has recently found, national rivalry is as fiercely safeguarded as ever. But English literature's domain, for example, extends to Scott, Elizabeth Bowen and Joyce Cary, and in some versions to Yeats and Joyce.⁸ The ambiguity, as Burchfield notes, extends to other nations: the French speak of *Angleterre* and the Italians of *Inghilterra*, while the Germans when they speak of *ein Engländer* do not usually intend discrimination between the English, Scottish and Welsh. The loose usage derives in part from the fact that use of the English language is so widespread. But it reflects also the current domicile of government and the teaching of English history in schools and universities.

Casual usage of the word 'English' may contribute to Scottish and Welsh resentments. But the practice also serves to harness the passion felt by a great many Englishmen for their country, its music and literature. If the assertion of separate Scottish and Welsh identities overreaches itself, that passion could be exploited. The England of Chaucer, Shakespeare, Milton, Jane Austen, Dickens, George Eliot, Tennyson and Kipling, of Drake, Nelson and Wellington, of Pitt, Gladstone, Disraeli and Churchill is there to be rediscovered and clothed in political reality should events dictate.

Again, if it is important to remind ourselves that there is an English nation as well as a Scottish and a Welsh nation, we must remember too that there are other cultures within the United Kingdom; and that an overwhelming majority of the English, Welsh and Scots are still committed to the Union – the task must be to strengthen, not destroy it. Only in Scotland are as much as a quarter of the population confirmed supporters of independence. In Wales the figure is less than 10%

The power of “Britishness”

Britishness is a profound psychological reality. The historian Hugh Kearney observes:

To see our history in narrowly English (or Scottish, Welsh or Irish) terms is to surrender ourselves to nationalist mythology.⁹

⁸ B. Ford (ed.), *The Modern Age*, Vol. 7 in *The Pelican Guide to English Literature*, (2nd edn., 1963).

⁹ H. Kearney in B. Crick (ed.) *National Identities*.

MAPS OF LOYALTY

The peoples of the United Kingdom acknowledge that there was a British Empire and are conscious that British history is something more than the history of the various nations within the British isles. They speak easily of the British army and British navy and, despite Bagehot, of the British constitution. Even though the great majority of Britons do not apply the term to themselves, at least not without giving the matter some thought, they are perfectly ready to accept the term as natural when it is applied to them. It is wrong therefore to characterise the United Kingdom as ‘just’ a multinational state, right to acknowledge a powerful sense of “Britishness” which acts as a unifying factor.

This British identity is something more than the fact that each of the four countries involved is well stocked with those whose geographical homes do not conform to their ethnic identity. Fewer than half of those currently living in Scotland, for example, were born there, while England is full of expatriates who belong to Caledonian Societies and celebrate Burns Night. Rugby has its London Scottish and London Welsh and, if English Prime Ministers have been to the fore in recent years, Blair is the fifth Scot and sixth Celt to have occupied Downing Street since 1918. Even that quintessential Englishman, Stanley Baldwin, might have been on that list since he came of MacDonald stock. It is possible to argue that with increasing mobility, these features of the British scene are likelier to increase rather than decrease, and pressure may grow for measures to ease the individual’s transition from one place to another.

Larger economic and political entities

In the mid 1930s, the logic of economic development was promoting moves towards larger and larger political entities.¹⁰ Since the Second World War that trend has continued although the development of the global economy has outstripped it. Transnational companies have emerged and some are developing the capacity to become truly multinational, international entities equal in power and potential to many great nation states. More striking still is the fluidity of finance capital and the interdependence of the global financial markets. The drive for free trade, first under the auspices of GATT and now of the more powerful World Trade Organisation, while ultimately beneficent, can engender powerful economic and social consequences for individual countries, and the development activities of the World Bank have led to attacks on its “neo-colonialism”.

No one suggests that it is possible to reverse these developments, but it is not surprising that growing uncertainty about the consequences for individual societies and for the environment have led to calls for more regulation. International agreements are unlikely to deliver all that is wanted or expected. Hence the arrival on the international scene of new organisations that are something more than free trade areas, but a good deal less than emergent states.

¹⁰ L.S. Amery, *The Forward View* (Geoffrey Bles, 1935).

FEDERAL BRITAIN

The European Union is perhaps the most developed of these new entities. Necessary as it may be, it evokes passionate loyalties from relatively few of its citizens. Since demands to reassert a sense of community are strong, the search for political identity focuses on much smaller units, closer to home. More and more of these seem to be based on language or ethnicity, or some combination of the two. Faced with these conflicting trends, the architects of the “new Europe” believe that they can be reconciled only in a federal structure. Attempts to suppress such identities rather than harness them may, as happened with the Basques, turn them towards violence. Increasingly few, even in Spain, can see any future for separate, smaller units in the modern world – support for Catalonian independence halved between 1979 and 1987 and less than a fifth of the more independence-oriented Basques were still of that mind in 1987. The implicit threat can still be used to advantage. Senor Pujol, while rejecting the aspirations to independence of the Esquerra Republicana de Catalunya, uses the implicit threat to promote an ever more insistent form of self-determination. However, federal Germany offers an alternative model where, for example, the CDU and CSU work as close allies.

The European Union is a standing challenge to the nation state. There are temptations for smaller nations to seek independence within that wider entity. Over a longer period it is not altogether fanciful to see regional ties with Brussels developing to the point where national governments are virtually bypassed. Clearly this poses a fresh source of danger to the unity of the United Kingdom.

A Europe of the regions?

The concept of a Europe of the regions is advanced by many who wish to destroy the political manifestations of national identity and to build a new Europe. The motives underlying this drive are not to be scorned. They are rooted in the idea that nationalism breeds rivalry and bitter antagonism, often leading to war, and the message is able to draw on contemporary Balkan examples for reinforcement. The Europe of the regions offers, so its proponents believe, a dual opportunity. It will be able to contain the aspirations of smaller nations like Scotland, Catalonia, even Bavaria for self-determination; and at the same time, to provide a solution for dealing with the scale of political economic entity required in a ‘globalised world’. And to do this while maintaining political structures that are rooted in genuine communities. Clearly its proponents hope that regions will elicit the loyalty which the European Union cannot inspire.

A Europe of the regions would not only threaten the destruction of the United Kingdom – in common with other member states – but would lead to an imbalance of power between the EU’s central institutions and the regional structures. And the problem would be worse if the relationship between them is not embedded in a firm constitutional framework.

MAPS OF LOYALTY

The current pressures in favour of devolution in Britain derive in part from the centralisation of power by successive governments. Couple that feeling to resentment about ways in which power is perceived to be moving to Brussels, and the mix is explosive. There is a strong feeling (by no means confined to Britain), that subsidiarity has not been made a reality. Whether the European Union evolves along parliamentary or presidential lines, its institutions are likely to prove no less adept at aggrandisement than their national counterparts. (Indeed they have already proved that to be true.)

Even if the EU evolves a form of parliamentary government, the Council of the Regions will be an inadequate counterweight. However, a presidential system could prove less satisfactory still. It is at least possible that a parliamentary system would make for genuinely trans-national parties and a responsible European government. But a presidency would be less likely to create a Europe-wide party system, and almost certainly face a severely fragmented European Parliament. So the first of these two scenarios would produce top-heavy government, and the second ineffective government.

In contrast, the *Europe des Patries* draws on loyalties which already exist and are likely to persist. That is not to say present arrangements are ideal. As Pierson has shown, in contrast to the purely intergovernmental model of Europe's governance, both the European Commission and the Court are developing a large amount of autonomy at the expense of control by the Council of Ministers.¹¹ Reform is essential, which will probably entail specifying a constitution for Europe rather than leaving its development to the European Court (as is largely the case at the moment). Nevertheless the model that best sets out developments in the policies and governance of the European Union remains that which sees it operating as an extension of the powers of the European nation state, rather than a replacement for it. One major purpose of replacing the gradual evolution of the European Union's constitutional arrangements with a more explicitly designed constitution would be to reinforce the control exercised over the existing structure by its parent states: another to create a structure in which subsidiarity would be made a reality.

In terms both of securing popular support, in ensuring democratic control and improving the practice of subsidiarity, a union of states is likely to be more effective than any supranational entity aspiring to statehood. However, within the European Union already the smaller players are marginalised. That underlines the importance of maintaining and strengthening the United Kingdom. At present, if Germany and France are in agreement, there is an assumption that their programme will carry the day. Only the United Kingdom can hope to dent their duopoly, modify their influence and offer both an alternative diplomatic partner. Britain, for the sake both of her constituent nations and Europe must remain among the major players and not allow her influence to be fragmented. Indeed it may not be wholly in the realm of fantasy (if a

¹¹ P. Pierson, 'The Path to European Integration: A Historical Analysis' in *Comparative Political Studies*, 29.2 (April 1996).

FEDERAL BRITAIN

durable settlement can ever be achieved in Northern Ireland) that the Republic of Ireland might see some advantage in rebuilding her links with a federal Britain.

Of the constituent nations of the United Kingdom, only England, with a population of some 40 million people would, if separated, remain a formidable player on the world stage. No doubt Scotland might achieve economic success, but it is indisputable that on their own they would be relegated to the fringes of the rule-making process. The importance of that process has been re-asserted by political scientists and economic historians in recent years and their work underlines the necessity of keeping a position as one of the shapers of the world, not the shaped.

The world is not on the side of the small battalions. The United Kingdom occupies a place on the Security Council which is already in question. It would certainly disappear if the United Kingdom broke up. On security matters Britain exercises her influence through NATO. Her influence in the new World Trade Organisation is exercised through the European Union. Britain united is much more powerful than any of its component parts. Her world role and position as a major international trading power is likely to be exercised more fully through continued membership of the European Union – but that organisation is likely to be more amenable to Britain's influence if it remains a *Europe des Patries*. That is why Britain must find a structure that will best preserve the United Kingdom, and not move towards regional government.

Can Britain be “regionalised”?

To reinforce the positive arguments which push us towards a federal structure – one which will arrest the forces making for disintegration within these islands – it is worth adding that no correspondence exists between the geographical regions of Britain and the entities which inspire political loyalty.

This is true even of Scotland. For reasons of their own, both the Scottish Nationalists and the Government are in agreement that Scotland should be treated as a single region. Economically, however, it appears to be made up of at least two regions – and it is by no means clear that their interests are one and the same. Nor are regions always easy to identify in practice. Even where they can be mapped, they may not exist at all so far as the mental geography of those living there is concerned. One of the more considered efforts to elaborate a regional pattern of government for England, John Mackintosh's *The Devolution of Power*, noted that in their research for the Royal Commission on Local Government, the LSE's Greater London Group could not agree a satisfactory solution for the south-east – he went for a single region himself – and found that he was left with at least one region, a quadrilateral based on Bristol, Oxford,

MAPS OF LOYALTY

Southampton and Portsmouth, which had no real unity.¹² But the problem lies even deeper than he realised.

Beyond the broad, if vague, distinction between north and south, almost no agreement exists about further sub-divisions of England. The North East and North West have little in common. Solutions which envisage a Northern Region, Yorkshire and Humberside and a much smaller North West present as many problems. Yorkshire in particular would oppose being divided. Manchester and Liverpool would be at odds; and further south Birmingham, like Liverpool, is a locus of identity, rather than a region of which it is the major centre. Where the Black Country is a recognisable entity, the West Midlands is not. Everyone west of the Axe would repudiate a south-west ruled from Bristol, but even if Devon and Cornwall were allowed to go it alone, neither would enjoy being ruled from Plymouth. As for the south-east, it is more of a geographical expression than a real entity. Kent in any case is looking to Nord Pas de Calais and Sussex to Seine Maritime. A regional structure could, no doubt, be cobbled together, but it is not likely to enlist the loyalties of those subordinated to it. Rather there would be pressures for smaller, more focused regions, which could hardly be building blocs for a European federal equivalent of the Bundesrat.

Discussion of the appropriate levels of governance in both Europe and the United Kingdom and of how best to secure the translation of the principle of subsidiarity into effective governmental structures and actual policies has been bedevilled by the use of the term “Federation” as a term of abuse. As a result the F-word in Britain has been treated like the love which dare not breathe its name – far less well, indeed. There are a number of reasons for this, some of which need to be addressed later in the course of the argument. However, the most obvious is the least justifiable, the perception that Federations are all of one type and share those characteristics which we identify from the American system. The picture is further skewed because our vision of the American Presidency has been shaped mainly by powerful figures like Roosevelt, Lyndon Johnson and Reagan. There is also a tendency, brilliantly analysed by Neustadt,¹³ for all but the wisest of observers to make assumptions about the way in which the system works from knowledge of our own practices. We find it difficult to believe that representatives in Congress sit as loosely to their party ties as in fact they do; nor can we conceive of either the degree of fragmentation or gridlock which can come about because of the separation of powers. We look on the American system as more centralised and the American Presidency as more powerful than is the case.

¹² J.P. Mackintosh, *The Devolution of Power: Local Democracy, Regionalism and Nationalism*, (Penguin, 1968), pp. 190-93.

¹³ R. Neustadt, *Alliance Politics*.

FEDERALISM: TRUTHS AND UNTRUTHS

MUCH OF WHAT IS WRITTEN on the subject of federalism is riddled with false assumptions. The Kilbrandon Commission, for example, in 1973 clearly thought it axiomatic that there was an inherent tendency to centralisation in the modern state. They argued that federal theory had been developed when government played a relatively small role in people's lives and largely confined itself to defence and international relations. They argued that:

In those circumstances, it was possible to divide sovereignty neatly between federal and provincial governments.... To all intents and purposes those matters which affected people from day to day could be fully controlled at the provincial level.

Central to this argument are the assumptions first, that the federal government is always more flush with funds than provincial government; and second, provincial independence is undermined through the way in which help reaches the provinces. No one who has experienced local government finance since the war will question the force of this argument. Another largely unsupported assumption underlies it:

...the impracticability of arranging a division of finance between the federal and provincial governments which will for any length of time satisfactorily match their respective functions under the constitution.¹⁴

Those who take this view, generally proponents of big government, seem to regard all cooperative or co-ordinating arrangements, however willingly entered upon, as a derogation from "true federalism".

In any case, the argument has been falsified by subsequent developments, not least in the United States where Ronald Reagan's "new federalism" saw a significant shift in the federal-state balance of power. This was a marked reversal of the trend inaugurated by Johnson's Great Society programmes. American political scientists quickly noted that this confirmed how the federal/states balance of power seesaws: informed by appeals to rival theories of the origin and legitimacy of American federalism, the "national idea" and "the compact theory". The former has had the greater influence on thought and action. But the latter, which regards the federal government as the creation of the states, was used to legitimise Presidential efforts to cut back federal welfare programmes.

¹⁴

Kilbrandon Report.

FEDERALISM: TRUTHS AND UNTRUTHS

The national idea, which identifies the people as the source of legitimate authority and has been used to justify a more expansive set of policies for the people, is no less wedded to federalism however. As one of its advocates, Samuel Beer, has written:

...the American people authorised and empowered two sets of governments: a general government for the whole, and state governments for the parts. The constitutional authority for the two sets of government is therefore co-ordinate. Neither created the other, and both are subject to the same ultimate legitimating power, the sovereign people.¹⁵

Federalism and centralisation

The view that a centralising trend is an inevitable feature of modern federalism is clearly mistaken. It derives from the idea that federalism is acceptable as a move towards a unitary system, but as a retrograde step if a unitary state is already in existence. First stated by Edward Freeman in the 19th century, it was an idea embraced by Dicey and it presumes that the unitary state is inherently more effective in the conduct of affairs.¹⁶ The point is often made, but infrequently analysed.

Dicey's case was made in terms of the deployment of power in international affairs. At first sight the part played by Congress in determining whether or not the United States goes to war lends credence to his argument. Closer examination, however, say of the Rhineland crisis in 1936 or even the Suez crisis, suggests that parliamentary and public opinion can inhibit or influence policy makers in the seemingly more favourably placed United Kingdom. The pressures of democratic politics outweigh institutional difference.

However, Foreign Affairs rightly or wrongly are looked on as of less importance than general governmental effectiveness. Here a good *prima-facie* case can be made that the British Prime Minister has greater freedom to act than either the American President or German Chancellor and that he can therefore be more decisive. Robert Elgie's *Political Leadership in Liberal Democracies* seeks to show that, when comparing political leadership in Britain and France with that in the United States or Germany, the latter enjoy less autonomy and that the division of power in the United States usually precludes long periods of personalised leadership (though it has certainly not precluded it altogether).¹⁷

A rather more sophisticated analysis, however, qualifies that judgement. Weaver and Rockman prefer to speak of the opportunities and risks embodied in certain institutional arrangements. At times the same institutional arrangements give rise to

¹⁵ S.H. Beer, *To Make A Nation: the Rediscovery of American Federalism*, (Harvard University Paperback, 1994), pp. 1-2.

¹⁶ E.A. Freeman, *History of Federal Government from the Foundation of the Achaian League to the Disruption of the United States*. (London, 1863), pp. 90-1; A.V. Dicey, 'Parliamentary Sovereignty and Federalism' in *Lectures Introductory to the Study of the Law of the Constitution*, (2nd edition. Macmillan, 1886), *passim*.

¹⁷ R. Elgie, *Political Leadership in Liberal Democracies* (Macmillan, 1995), Chapter 8.

FEDERAL BRITAIN

both. Nevertheless, in terms of policy innovation, resource targeting, imposing losses, setting priorities and co-ordinating conflicting objectives, a concentrated system like that of the United Kingdom usually fares well. However, even in these areas not all the answers come out as expected. The American system, for example, favours policy innovation because it induces policy entrepreneurship from diverse sources, although it might be added that this works better at the level of particular programmes than at any more comprehensive level.¹⁸ However, as Baumgartner and Jones add, the great number of distinct venues for policy enactment enable new ideas to be:

...tried out, later to be adopted and mimicked by others if they are successful, or abandoned if they are found unworkable.¹⁹

While federalism limits comprehensive policy change, it allows new and sometimes unfashionable ideas to flourish. (On the whole the United States is better at representing diffuse interests and managing cleavages than a unitary state.) It also makes it less likely that the executive can blunder on, isolated from all corrective pressures. The 'Poll Tax' saga suggests that there are deficiencies in the British way of governing that are not captured even in Weaver and Rockman's subtle analysis. In a sense Britain's government resembles Churchill when viewed through the eyes of the first Lord Birkenhead:

Here comes Winston with his hundred horsepower brain; but, my God, when he is wrong...

And there are further problems with the system as it now operates. The centre is undeniably overloaded and Parliamentary scrutiny ineffectual.²⁰

Relieving the centre, it should be added, does not imply abandoning the advantages of a parliamentary system and majoritarian voting. They can and should be replicated in the component parts of the federation. The correct lesson to be drawn from Weaver and Rockman is not therefore that unitary states are inherently superior, but that in a Federal Britain considerable power can be devolved as long as the English, Scottish, Welsh and Northern Irish sub-systems are not saddled with 'hung' parliaments.

In any case, there is an overriding point to be made. In the grossly unstable situation into which the current Government is blundering, a federal system may be the only (or anyway the best) way to minimise the dangers. On the understanding that there is at present a decided majority in each of the United Kingdom's four parts

¹⁸ R.K. Weaver & B.A. Rockman, *Do Institutions Matter? Government Capabilities in the United States and Abroad* (Brookings, 1993).

¹⁹ F. Baumgartner & B. Jones, *Agendas and Instability in American Politics* (Chicago, 1993), p.216.

²⁰ For perceptive contemporary accounts of these problems, consult F. Mount, *The British Constitution Now* (Heinemann, 1992); S. Jenkins, *The Nationalisation of Britain* (Penguin, 1993), and A. Marr, *Ruling Britannia* (Penguin, 1996).

FEDERALISM: TRUTHS AND UNTRUTHS

against secession, one might successfully devise a reasonably stable balance of power which prevents rolling competition for ever greater autonomy, while at the same time inhibiting constitutional change. Part of the attraction of a federal constitution is its greater rigidity, but its juristic make-up is such that it is flexible enough to allow a considerable degree of co-operation where this is seen as essential. As American experience shows, this can be achieved without constitutional change and is the more effective for our purposes because the balance of power can shift behaviourally without any alteration in the formal subdivision of power.

One can also point to real advantages in a federal system to offset the loss involved in moving from a unitary system of government. Dicey was not wrong in pointing out that such a move “revolutionises the whole constitution of the United Kingdom”. That is all very well. But the supposed consequences – “undermining the parliamentary sovereignty, it deprives English institutions of their elasticity, their strength and their life; it weakens the executive at home, and lessens the power of the country to resist foreign attack” – are open to dispute. Many good judges would indeed feel that Parliament has been sapped of life and that party government, while in general to be applauded, has made it possible for the executive to draw too much to itself. If ministers were truly in the driving seat that might not matter. A convincing case can be made that in most new policy departures with political importance and/or visibility, this is indeed so. However the burden they take upon themselves is too great, and much now is determined by civil servants or handed over to the Quangos that enjoy such vigorous life in the modern British government.

Federalism as a buttress to limited government

Where Dicey speaks with loathing about change, Hailsham, writing when a combination of socialism and corporatism seemed more threatening than it does today, thought that a degree of rigidity could with advantage be incorporated into the British constitution. He was not the only Conservative to welcome the buttress to concepts of limited government afforded by a codified constitution and the incorporation of a normative view of rights into British law. Lord Alexander is but the latest of a number of distinguished lawyers who see some need to add to the charters of liberties that began with Magna Carta and currently end with the 1689 Bill of Rights.²¹ Ferdinand Mount added his voice to those calling for the incorporation of the European Convention on Human Rights into domestic law in *The British Constitution Now*²², although he acknowledged that it would be a dramatic and memorable step. Both through the signature of the Amsterdam Treaty and more directly through legislation, the current

²¹ Robert Alexander, *The Voice of the People: A constitution for tomorrow* (Weidenfeld & Nicolson, 1997), Chapter 9.

²² First published by Heinemann in 1992, (Citation from Mandarin Paperback, 1993), pp. 210-11, 230-3.

FEDERAL BRITAIN

Government is now committed to this course of action. Short of leaving the European Union, and perhaps not even then, it will not be possible to go back on this step. (However, no British government has felt able to resile from the Convention and it is likely to have less impact than critics of the step assert. That is not to say that they are wrong about the impact on the judiciary, simply that the pass was sold long ago and the judicialisation of politics is already under way.)

Lord Hailsham went further in his 1976 Dibleby Lecture and in his book, *The Dilemma of Democracy*, which followed two years later. His target was a phenomenon first identified by Laski when he noted “our Government has become an executive dictatorship tempered by the fear of Parliamentary revolt.”²³ Hailsham wrote:

I have been trying to paint a picture of Britain today which exhibits the paradox of elective dictatorship, an over-centralised and top-heavy state, possessing absolute powers in theory, but unable to exercise them in practice, using them oppressively in innumerable small things, but unable to pursue a steady and consistent course in great, a House of Commons elected but unrepresentative, attempting too much work and achieving too few results, arrogant but possessing insufficient authority, a House of Lords which is all but impotent, a bureaucracy which is over-centralised, pressure groups and parties seeking to control the levers of power and succeeding in doing so occasionally, but spasmodically and in inconsistent ways. Above all I am trying to suggest that, with the increase in the scope and intrusiveness of modern government, the unit of the United Kingdom is far too large to be operated as a unitary state devoid of constitutional safeguards. Now if the whole, or any part of this, is a fair diagnosis of our present condition, Scottish nationalism will not go away because the grievances to which it gives rise are genuine.²⁴

Are such models of elective dictatorship too crude? There are more checks and balances in the way the British political system operates than they allow and, as Mrs Thatcher found to her cost, not only is the elasticity of the system exaggerated, but the elastic can snap back with brutal force. Increasingly, however, the checks on executive power are exercised by backbenchers on the government side of the House, by the press and television (themselves not only unaccountable, but far better at demolition than they are at constructive debate or even at explaining the complexities of an issue, let alone a range of them), by an ill-informed electorate pronouncing on questions set for them by the opinion pollsters, and, to an increasing extent, as civil servants are reminded, by the “Judge over your shoulder”. Pressure groups of one kind or another have long looked to Whitehall first, and (certain moral issues excepted) regard the

²³ H. Laski, *Reflections on the Constitution* (Manchester University Press, 1951).

²⁴ *The Dilemma of Democracy* (Collins 1978), p.165.

FEDERALISM: TRUTHS AND UNTRUTHS

Commons as something of a last resort. The media offer a better means of mobilising public support, and without that support it is unlikely that the government will do anything other than use its majority to vote the matter down.

The great departments themselves and, more particularly, the Treasury are a major check on Prime Ministerial power, but very often when one of them has the bit between its teeth, little stands in its way. From the very heart of government, a former Permanent Secretary to the Treasury has observed the ease with which a minister can railroad his business through Cabinet,²⁵ and, once he or she has its backing, little short of a major backbench revolt can stop the measure from going through. A whole series of examples can be adduced in support of this point, ranging from the abysmal compromise of the 1957 Homicide Act and the abolition of Retail Price Maintenance in 1964 to the Community Charge legislation and the ratification of Maastricht.

No surprise that the media have lost interest in the work of Parliament, preferring to chronicle the scandals and the party splits. Where *The Times* once devoted 400-800 lines a day to Parliament and the *Guardian* 300-700, the corresponding figure for 1992 was less than 100.²⁶ The Parliamentary sketch writer has taken over from the reporter and no paper today regularly reports the business of the Commons. Even the respected BBC programme, *Today in Parliament*, has been under threat. Ministers and MPs wishing to express their views find it better to make their way to No 4 Millbank or to College Green than address the Commons and the former tend to trail any policy announcement with leaks to the press and an appearance on the *Today* programme.

²⁵ Sir Douglas Wass, *Government and the Governed*.

²⁶ Quoted in A. Marr, *Ruling Britannia*, (Penguin edition, 1996), p.132.

PARLIAMENTARY DECAY

THE CONSTITUTIONAL HISTORIAN AND CONSERVATIVE MP, Sir Kenneth Pickthorn, memorably observed that

...Parliamentary Procedure is all the constitution the poor Briton has.²⁷

Hence the concern, voiced with increasing frequency and to little effect as the twentieth century developed, that the Commons has become the creature of the party machines and lost its centrality to the national debate. The Parliamentary reformers' panacea, departmental select committees, has done less to retrieve the situation than their advocates expected. However, like Parliament itself, they are a powerful instrument for throwing light on the activities of government. The very existence of Parliament compels governments to make a reasoned case in support of their decisions and to lay themselves open to criticism in what is best characterised as a continuous election campaign. Far more than is generally appreciated, Parliament already possesses the tools to open up the business of government in ways which are more effective than anything a Freedom of Information Act would do.²⁸ But Parliament could be a more effective scrutineer (particularly of legislation, but also of executive action), if only it had time to search out more thoroughly what is being done in its name.

Problems at Westminster

Philip Norton is right to suggest that the heart of the problem lies not in any deficiency in the powers of Parliament, but a lack of will on the part of MPs to flex their muscles.²⁹ However, the sheer weight of parliamentary business does not help.³⁰ Nor does the government's wish to secure the passage of an extensive legislative programme. No wonder that while the whips are ready to encourage MPs to develop a degree of specialisation in their service on select committees, they offer no encouragement to

²⁷ Hansard, 8 February 1960, col. 70.

²⁸ That is not to argue against a Freedom of Information Act. However, those in Canada and the United States are cumbersome and I would prefer to begin by deeming all Government documents open in the sense that they would be made available in the PRO unless a conscious decision was made to close them for a specific period.

²⁹ 'The House of Commons and the Constitution: the challenge of the 1970s' in *Parliamentary Affairs* 34.3 (1981).

³⁰ P. Norton, "The Growth of the Constituency Role of the MP" in *Parliamentary Affairs* 47.4 (1994).

PARLIAMENTARY DECAY

standing committees to scrutinise legislation properly. Government backbenchers are expected to remain silent and vote when required. Since the Opposition now habitually treats the committee stage of legislation as a further instalment of the party dogfight, bills are not subject to the detailed improvement to which they were once subject. If the Opposition is armed with telling amendments by outside bodies, its view may prevail; but very often the minister concerned takes the point away, and subsequently tables an amendment of his own. The Labour MP John Garrett's account of what happened to the Companies Bill in 1989 is telling, but unfortunately far from unique:

The Government's own amendments had reached the thousand mark and included no fewer than fifteen new clauses which were introduced on the last day of the committee's sittings. These new clauses, in effect a new Financial Services Act, introducing extensive measures to regulate the City and provide investor protection, were discussed for only four hours.³¹

The Commons standing orders since 1986 have enabled standing committees to take evidence before considering clauses and amendments. However, this procedure, used experimentally on five bills in the 1980s, has not been used since it was formalised. Earlier the White Paper, *Our Changing Democracy: Devolution to Scotland and Wales* had embodied the suggestion, previously made by advocates of Parliamentary reform, that permanent subject committees should be used to examine all aspects of legislation. The suggestion has not found favour at Westminster, but if departmental select committees were the forum in which most, if not all, legislation was taken, many recent ineptitudes would have been avoided. However the general trend of such changes as governments propose or approve seem designed to turn the Commons into an even more onerous legislative treadmill. The current Government proposes to remove even constitutional bills from the floor of the House and to timetable – the term 'programme' is New Labour speak for guillotine – all legislation.

True, programming by all party agreement was one of the recommendations of the Hansard Commission to ensure that all parts of a bill were scrutinised. But if the intention is to improve the process rather than speed it up, it should be combined with a greater use of the specialist committees as part of the legislative process. However, that is unlikely to happen. Time and the pressure of business give the whips conclusive arguments for avoiding so radical a reform. Also governments can live with the present select committees because their impact is limited. If they became engaged with legislation or even the proper scrutiny of the estimates, they would constitute a threat. But, as Mount notes, it is:

³¹ John Garrett, *Does Parliament Work?*, (Westminster), pp. 51-52.

FEDERAL BRITAIN

...only if Parliament systematically slows down the process of making laws that we can hope to improve the quality of the legislation.³²

At the same time, paradoxically, much useful legislation of limited political attractiveness remains on the departmental shelves. Governments have to resort to a growing volume of delegated legislation. And this gives rise to a further concern, whether Parliament has sufficient control over these skeleton acts, which leave much of the detail to the department to fill in by secondary legislation. Many would argue that the scrutiny mechanisms of the House in regard to delegated legislation are failing to cope with the burden, and seek to involve the departmental select committees. But there must be a limit to what they can effectively do. Of course none of this greatly worries ministers, many of whom happily take the kudos for legislating without waiting to see how the legislation will actually operate. One recent minister was credited with a remarkable ability to surf just ahead of the breaking wave, while Kenneth Clarke was thought a little eccentric for asking Mrs Thatcher whether he could not remain at Health to see his reforms through. Add to that a growing tendency, particularly marked in the fields of local government and education, to replace one piece of legislation with one another, almost before its predecessor has had time to take effect, much less be tested in practice and evaluated, and it is little wonder that the Law Commission found that much of the law:

...is riddled with faults and flaws.... and it is often only the imagination and ingenuity of our judges which conceals with judicial sticking plaster the depth of the fault lines.³³

Too much government

Governments seem unlikely to abate the pace. Overload will continue to cause problems unless reformers can discover how to share the load and pursue subsidiarity. The weight of this overload is evident from the increase in the number of meetings of standing committees from 152 in 1945/46 (not, it should be noted, a light session) to 562 in 1989/90; the quadrupling in the size of the statute book over the period since 1945; the 180 days per session put in by MPs from 1974-6, 240 in 1992-3. Austin Mitchell MP claims that this makes the Commons “the hardest worked legislature in the world.”³⁴ He is dismissive, perhaps too much so, of the much vaunted constituency role of an MP, regarding himself as little more than a postbox,³⁵ and, with the exception of moral and conscience issues, pictures himself as a heckler of the legislative steamroller. The problem was already acute 50 years ago, as L.S. Amery noted in his incisive *Thoughts on the Constitution*. His concern was with the amount of debate on the principles

³² *The British Constitution Now*, (Mandarin edition) p.187.

³³ 28th Annual Report of the Law Commission.

³⁴ ‘Backbench Influence: A personal view’ in *Parliamentary Affairs* 47.4 (1994) p.691.

³⁵ However, he regards constituency correspondence as a valuable interface between the public and the government machine.

PARLIAMENTARY DECAY

of bills which he thought, correctly, should be the focus of the national debate. The length of discussion which could be allowed if the Government was to carry its programme had been substantially reduced in the course of the century, he pointed out. "Second reading debates, once spread over weeks, are now rarely given more than a couple of days", he told his audience, and when he published the text of his lectures, he noted that in 1893 the Government of Ireland Bill took 14 days for its introduction and second reading and three on report and third reading. Compare this with the position Professor Griffiths found when he considered the position in the late 1960s and 1970-71. By then the normal time given to policy bills was five to seven hours, but more than a third of the bills in the three sessions he examined were debated for less than two hours. The longest period of debate, not surprisingly, was given to the Conservative Industrial Relations Bill, which was debated for twelve hours. Committee sessions had also reduced in number: in 1968/9, for example, the 48 bills which went to standing committee averaged five sittings each, nine only taking more than ten sittings. More significant even than these figures is the way in which the great bulk of legislation is now taken in standing committee and not on the floor of the House.

Reforming the House of Commons, while not entirely ineffectual, has not saved it from marginalisation. Hence the current fad for electoral reform. Whatever the effect on government, hung parliaments, it is felt, would restore independence to MPs and authority to the House. The media would be bound to take an interest. The case is far from proven, but in any case *cui bono?* Parliamentarians, yes, but would benefit accrue to the electorate? The strength of the present system is that it offers the electors a clear and effective channel of accountability. It may be rough on the individual MP, but if an elector dislikes what the government has been up to, he or she can penalise the local representative of the government party. Parties are coalitions, but permanent coalitions made in advance of elections. They have no incentives to present a fudged platform to the electors – which they would do if they faced the need to bargain after an election. Nor can they shuffle off the blame onto their coalition partners for any failure to carry out their promises. Coalition politics, it should be noted, works through a process of elite accommodation and the insulation of that process from pressures on the ground.

It is also far from clear that the media would respond in the desired way. They would undoubtedly be interested (and better informed) about the disputes within Coalition governments and the likelihood of their fall. Some of that would extend to votes in the Commons. But there is no evidence that they have the time or resources to pursue the detailed work of the legislature nor the interest to attempt this when they can create an alternative forum for debate. It is fun to set the political agenda and harry the politicians in their self-arrogated role as Tribunes of the People. This may make them vulnerable to spin, but they have responded by making spin part of the story. The actual substance of issues increasingly resembles the Cheshire cat. A shrewd BBC correspondent, Nicholas Jones, has exposed the collusive element here, but if the new

FEDERAL BRITAIN

world of spin doctors and sound bites serves the interests of some politicians and newshounds, it fails to serve the interests of the people – or educate them either.

The benefits of federation

Federation, while no cure-all, would help without necessitating the radical change in the character of our politics, which a change to proportional representation in the voting system would bring. First, it would give a chance for elected members in the new Province to rethink their role and that of the provincial legislature. They could be required to consider, if not to put into effect mechanisms for legislating which drew on the work of the Hansard Commission and earlier reviews of the legislative process. Variation in practice might be possible in the four provinces from which all could learn. Secondly, it would free the federal chamber to embark on a much more proactive role in relation to European business. The Commons has taken its time in adjusting to the volume of that work. Although its handling of such matters has improved greatly in recent years, sparsely attended debates late at night are scarcely an adequate response, even though they now take place in advance of the relevant European meetings. The extent to which federation would help the flow of business is more questionable, but those who considered the matter in detail in the aftermath of the First World War were in favour.

In June 1919 the House of Commons actually passed a resolution in favour of the creation of subordinate legislatures within the United Kingdom. The Government was invited, without prejudice to the Irish question, to appoint a committee to consider and report upon a measure of federal devolution applicable to England, Scotland and Ireland. There was also a somewhat vague reference to Wales. The Speaker presided over a committee drawn equally from the Commons and Lords and they were able to agree that England, Scotland, and Wales should have devolved legislatures. However, there was disagreement over the nature of these bodies: whether there should be separately elected legislatures for each country or whether the MPs already elected to the United Kingdom should represent them also in separately convened national Grand Councils. In the event, it made no matter, since the report made by the committee in April 1920 was not taken forward by the Government. The latter suggestion, while it would cope with the “West Lothian question” would clearly not relieve in any way the pressures on the individual MP: hence the need for separate provincial legislatures.

THE BOON OF SUBSIDIARITY

THERE ARE A NUMBER OF ADVANTAGES to the rigorous pursuit of subsidiarity. Even the conduct of government is likely to benefit. Indeed, if democratic control is to be asserted, reducing the amount for which the central government is responsible is essential. In *The Binding of Leviathan*, Waldegrave demonstrated that:

...paradoxically, the result of a tyrannical concentration of democratic power results in the passing of power away from directly democratic hands altogether – to the Civil Service who control the executive.³⁶

Conversely Crossman is among a number of ministers who have asserted that the only way for a minister to proceed is to identify two or three priorities and to concentrate on those. None of the ministerial witnesses I have in mind could be described as lacking in force or effectiveness. Kenneth Clarke, during an LSE Seminar, bore witness to another phenomenon familiar to ministers:

If the civil service agrees with what you want, it will happen faster than you would have believed possible; if they don't, it's like wading through treacle.

There is no doubt that the creation of federal and provincial tiers of government would improve both ministerial and parliamentary control over the permanent members of the executive, and reduce the need for civil servants to learn the mind of the minister (which they must do to avoid the whole process of decision-making grinding to a halt).

However, the principle of subsidiarity clearly needs to be taken a good deal further. Both bodies which acted as weft to the executive's warp in the making of the British constitution (Parliament and local governance) are in some disrepair. Some particular reforms might assist the latter's regeneration, as is also the case with Parliament. But for the purpose of this paper it is necessary only to select aspects which underline the need for a more energetic pursuit of subsidiarity and for some means of safeguarding a greater diffusion of power.

None of this calls into question the decisions of recent Conservative governments to leave more to the market and to empower bodies like school governors, which are closer to the ground and potentially more accountable for their actions than local authorities. But it is an increasing tendency of governments, including some who claim to be doing

³⁶

W. Waldegrave, *The Binding of Leviathan* (Hamish Hamilton, 1978), pp. 74-5.

FEDERAL BRITAIN

the opposite, to arrogate those functions to itself; or rather, having done so, delegate them to bodies accountable to ministers. One recent example helps make the point. The current Government's White Paper, *Excellence in Schools*, while ostensibly treating local education authorities as partners in the effort to raise standards, treats HMI as the first line of defence against poor schools and has a top-down approach to development planning reminiscent of the Attlee Government's ill-fated approach to the implementation of the 1944 Act.

Nor is the creation of local quangos entirely beneficial. Critics may go too far when they picture a top-down picture of schools and housing associations under the direction of ministers acting through intermediaries like the Housing Corporation or the Funding Agency for Schools. But it is all too true that draconian powers have sometimes been given to the intermediaries – and too little attention paid to the need for transparency. Equally, while a strong case can be made for the management of hospitals by a public trust, it is far less obvious that local commissioning authorities should be appointed rather than elected: the more so if fund-holding doctors cease to exist.

Federalism and local government

If local authorities were stripped of their role as providers of local services (except in the last resort), might they not become more effective and more accountable than Quangos as commissioners, enablers, and regulators of others who supply the services the public want? New ideas for local government *are* needed. There is both room and need for safeguards. Some of the more fashionable ideas like annual elections and proportional representation do not address the problem: indeed are more likely to weaken the control of councillors over officers than to enthuse the local electorate. Bringing local taxation and spending more into balance, and greatly reducing the part played by grant from the new provincial governments would help; and could more readily be achieved if the funding for schools reached them directly, rather than via the local authority.

Once you remove sums for which local government is little more than a conduit, it becomes clear that the functions of new-style local authorities could be financed principally from local taxation, as though the need for an equalising mechanism would remain: one settled by the provincial government, and perhaps based on the median income within a local authority.³⁷

One of the advantages of provincial (rather than regional) government is that there would be no need to alter the structures of local government. This Government needs regional devolution to offset the destabilising tendencies of its policies in Scotland

³⁷

However, it might be noted that within London the equalisation scheme was once financed by formula-based transfers from the richer to the poorer boroughs. The decision by the provincial parliament as to the best course to follow should be based on the broad principle of matching tax and spending powers as closely as possible.

THE BOON OF SUBSIDIARITY

and Wales. But it shows no enthusiasm for such changes and it is easy to see why. It faces resistance from departments of state, and, with the exception of London, finds a majority in England against the project. It also faces resistance from local government.

It is impossible to envisage any serious move towards regional government (as opposed to administrative decentralisation) without reforming the structure of local government. Any move towards the former must lead to radical restructuring. The research work for the Royal Commission on Local Government concluded that a choice was inevitable between a County/District and a Region/District pattern. Unless one envisages the perpetuation of an unnecessary layer of local governance, and the problems of co-ordinated action which follow, county government would have to go. Districts would be needed to provide those services for which direct local access is required. Unitary authorities would be anomalous, too powerful to be left as they are but too large, as has been found already, to be comfortably reduced to district status. Recently created unitary authorities in Nottingham, Derby, Bristol, Brighton and Hove, even the Medway Towns, would bitterly resent the removal of powers from them. While the reformed structure was being worked out, the UK would be blessed with one tier of administration too many. Some might say that is the case with the Government's proposals for Wales.

The costs and disruption involved in making such changes would be enormous, and unjustified except in the certainty that a federal or quasi-federal system (involving say a dozen units) was the only structure which could deliver an effective measure of subsidiarity. In fact not only could a combination of a provincial parliament and the existing local government structure do the job, but it is fair to suppose that it more closely reflects present community interest.

Because most business concerning Scotland, Wales and Northern Ireland is already handled by territorial departments, over a wide range of policies, England exists already as a policy-making and administrative entity. To complete a federal system, an English Parliament would need to be created, the Welsh assembly given similar powers and, if and when a settlement is reached in Northern Ireland, it would be appropriate to make parliamentary arrangements for that province also.

The decline of local government has aroused fears of a centralising tendency which, this Government has not allayed, Scotland excepted. Quangocide remains a popular cause. The nationalised industries may have gone, but state power has taken on a new and in some ways more effective form as regulation becomes entrenched. Administrative devolution appears to have taken root in the government machine and decentralisation takes the form of regional offices, to which will be added non-elected regional development agencies. The Health Service – even the new commissioning authorities – remains outside the sphere of local government. Some see, in the requirement on LEAs to produce development plans for approval by the Secretary of State, an instrument for centralising control of the education service. Little here enthruses supporters of the

FEDERAL BRITAIN

diffusion of power: much disturbs them. Accountability is increasingly a sham so far as Parliamentary scrutiny of this vast area of sub-central government is concerned.

Altogether it is clear that the principle of subsidiarity deserves greater application within Britain as well as in the European Union. This indicates that “a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level” and it already features in the constitutions of some European states. In Germany, for example, Article 28 of the Basic Law guarantees the *Länder* the right to regulate on their own responsibility all the affairs of the local community within limits set by law. If there are responsibilities important to society as a whole or where federal intervention would improve living conditions, Article 91a provides that the Federation may participate in the discharge of certain responsibilities of the *Land* government, but the implication is quite clear, that in general the federal government may not interfere in the *Länder*. Once a sane distribution of power and policy has been achieved in the United Kingdom, it would be wise to afford it a similar constitutional protection.

The advantages of decentralisation

In *Anticipatory Democracy*, Alvin Toffler analysed the way in which:

...the pressure for accelerated decision-making slams up hard against the increased complexity and unfamiliarity of the environment about which the decisions must be made.

He identified two possible responses:

...to further strengthen the center of government, adding more and yet more politicians, bureaucrats, experts, and computers in the desperate hope of outrunning the acceleration of complexity; the other is to begin reducing the decision load by sharing it with more people, allowing more decisions to be made ‘down below’ or at the ‘periphery’ instead of concentrating them at the already stressed and malfunctioning center.

Decentralisation has many advantages. Institutions are likely to be more flexible in responding to changing circumstances. They will be closer to problems and opportunities; they can respond not only more speedily but more creatively. When Harvard’s Kennedy School of Government examined the Ford Foundation’s Innovation Awards, they discovered that most ideas bubbled up from those who were in the front line. With the spread of education and information, leadership is most effective if exercised by persuasion and in consultation with those who are going to carry the decision into effect. That implies a thorough decentralisation of authority and, if a degree of accountability is to be preserved, control must lie with local communities and their elected leaders.

THE BOON OF SUBSIDIARITY

Shifting power in this way would offer the chance to regenerate democratic practice. A structure in which elected politicians prefer the creation of appointed bodies (ultimately under the tutelage of civil servants) to more local democracy is unhealthy. It is instructive to recall that the Chairman of one such body had to make contact with his sponsoring Minister on a Welsh hillside in order to gain from him an instruction to his civil servants that he should be given regular access to the Minister by whom he had been appointed and to whom he was supposed to be proffering advice. Avid watchers of *Yes, Minister* or readers of the Hacker diaries will not be surprised by this true story, though even they may be dismayed by it. Still more to the point ministers have too little time to check all the advice they are given. All too often the ‘map’ provided by officials and meant for their guidance bears little resemblance to the real policy domain of those who have to operate within it. More open government might help, but local government would be better.

The tendency is to treat local authorities as an extension of the long arm of Whitehall. The way Government modified relations between elected members and their officers following the Widdecombe Report weakened political control of local bureaucrats – the latter being seen, contrary to all that theories of public choice teach, as good surrogates for business expertise. Then there is capping, whereby local taxation, after recent reforms, has been virtually divorced from local spending.

In the course of a powerful defence of local government, with all its asymmetries and untidiness, Mount in *The British Constitution Now* suggests that:

...a degree of entrenchment will turn out to be an important supporting characteristic of genuine devolution.

His proposal was to include in constitutional measures requiring a two-third majority for amendment, any provisions for devolved power – whether to local government or regions. That:

...might impart qualities of responsibility and durability which could help rebuild both local pride and the local fiscal base which has been so pitifully eroded by the tragicomedy of the poll tax. The unbudgeable establishment of lower tiers of government in federal systems may be one of their principal virtues.³⁸

He adds a pertinent word about successful constitutional arrangements, that they need to be *branched*. His analogy with a bare-trunked tree may be queried. But he is right to argue that a diffused structure of power is better able to absorb the gusts of public indignation which periodically threaten to overwhelm those who attempt to govern.

The case for decentralisation has always been powerful. It brings government closer to the communities in which people live and allows it to be more responsive, accountable

³⁸

Mount, p.203.

FEDERAL BRITAIN

and effective. It enables more people to participate as citizens in decisions which affect their daily lives. It affords more opportunity for innovation and offers more venues where pressures can be exerted and in which new ideas can take hold. It may well promote a sense of community and responsible citizenship and encourage more voluntary activity.

The financial implications

None of this can work without a proper financial settlement. Dependence on the Treasury for resources restricts local room for manoeuvre, blurs accountability and virtually forces the central body to take control lest it share the blame. This tale is often told about local government, and the consequences are evident in the change in the relationship between town hall and Whitehall. All departments are now centralisers. Can a financial structure be created which minimises transfers between the federal government and the provincial governments in England, Scotland, Wales and Northern Ireland?

The broad principles on which such a division could be accomplished are clear. First of all federal institutions must retain their responsibility for the overall stability of the economy as well as being able to fund their own activities and conform to the EU's funding regime. The basic tools for managing the economy in recent years have been the manipulation of interest rates and, to a lesser extent, setting the levels of indirect taxation. For both economic and political reasons it has not been thought right to manipulate levels of direct tax, and Conservative governments in particular have had an overriding commitment to lower levels of direct tax. Since this tax is no longer used to manage the economy why should it not be transferred to the provincial governments who would be responsible, directly or indirectly, for the majority of public expenditure? The setting of interest rates would remain, at least for the foreseeable future, the task of a single central bank (although for obvious reasons it might not be called the Bank of England). Indirect taxation and business taxation would be federal responsibilities and the UK government would be responsible also for making Britain's contribution to the EU. It should be observed incidentally that since indirect taxes have the potential to feed into prices, this gives the central government every economic and political incentive to minimise its costs.

The justification for distributing the products of taxation in this way can be seen in the list of functions to be transferred to the new provincial structures. In practical terms, it will be virtually impossible not to go so far as the extensive transfers already proposed for the Scottish Parliament, including the devolution of all matters that are not specifically reserved (the general power which has always been denied to local government and which in effect would make Scotland a federal province).

Given the very extensive and costly services to be transferred to the provincial governments, it is a matter for some concern and debate whether direct tax should be progressive or proportionate. If the UK Parliament should decide to limit the powers of the new provincial parliaments to legislate progressive taxes – they might be wise to do

THE BOON OF SUBSIDIARITY

so in the light of recent economic experience and past political behaviour – the principle of proportionality could be written into the constitution.

CHAPTER 10

WHO GETS WHAT

PROVINCIAL PARLIAMENTS FOR ENGLAND, Wales and Northern Ireland would be given the powers already conceded to the Scottish Parliament. These are listed fully in the second chapter of the White Paper, *Scotland's Parliament*, and are only listed briefly here:

Health	Education, including higher education
Teacher supply and HMI	Science and research funding
Training policy and lifelong learning	The Scottish Qualifications Authority
Careers advice and guidance	Local government including local domestic and non domestic taxation
Social work	Voluntary sector issues
Housing	Area regeneration
Land use planning & building control	Economic development
Financial assistance to industry	Inward investment
Promotion of trade	Promotion of tourism
Passenger and road transport	Appropriate air and sea transport powers
Inland waterways	Criminal and civil law
Electoral law	Judicial appointments
Criminal justice and prosecution	Civil and criminal courts
Scottish Council on Tribunals	Legal aid
Prisons and parole	Police and fire services
Civil defence and emergency planning	Application of international legal agreements in devolved areas
Liquor licensing	Protection of animals
Water supply and sewerage	Environmental protection
Natural and built heritage	Flood prevention and coastal protection
Reservoir safety	Agriculture
Food standards	Forestry
Fisheries	Sport and the arts
Gaming and casinos	Statistics, public registers and records

In addition the administration of European structural funds, powers and duties in relation to electricity supply and civil nuclear emergency planning will be transferred, although the law making powers in these areas will rest with Westminster or Brussels.

WHO GETS WHAT

There are a number of matters in relation to rail and air transport, where the European Union does have a role, which need detailed consideration. As a rule, these powers should be transferred. It is also worth considering whether legislation on employment and health and safety matters (which are reserved to the central government in the Scottish White Paper) are properly central functions.

What would be left to the federal government? Principally foreign and defence policy and all matters relating to the constitution of the United Kingdom. In addition, since it would have an overall responsibility for the economic and monetary system, it would be right to leave not only business taxation but also the law on companies, insurance, intellectual property and competition with the Federal Parliament. It would seem sensible to add the regulation of financial services and negotiations on trade policy. Consumer protection in all other fields could be transferred downwards.

The most important function to be exercised by the federal government, however, would be to co-ordinate the European dimension of the transferred powers. In this respect, the federal government would negotiate on behalf of the United Kingdom as a whole. Freeing the central institutions and more particularly Parliament to cope might well help to offset the technocratic character of current EU decision making and the fragmentation of the central machinery of government which, if not induced by EU membership, has undoubtedly been accentuated by it. Integration into the European Union has led not only to sectoral co-operation but also to the creation of functional networks which are potentially a threat to the unitary nature of the state. The diversification of inter-state contacts and the growth of functional interdependence have a centrifugal effect on member states. Skilful politicians and departmental civil servants can make use of these developments to cut free from the constraints imposed upon them by other domestic actors, and not least among them Parliament. Although the European Secretariat in the Cabinet Office is more successful than most in overcoming this centrifugal tendency, outside observers suggest that as departments learn to play the European game, its influence is diminishing.

Parliament has surprisingly little influence and exercises no control over what is being negotiated at the European level. It would benefit from being freed from its other concerns to concentrate on that task. Inevitably that would mean that in constituting the UK as a federation, there would have to be provision for the Federal Parliament to override the provincial parliament wherever EU law predominates. In return there would have to be a provincial right to be consulted thoroughly and to take part in the ratification of such law. This approach has not proved a problem in Germany. The rights of the *Länder* are reconciled with Germany's membership of the EU in three ways, First, the Bundesrat represents the interests of the *Länder* and no federal legislation can be carried without its consent. Secondly there is intensive consultation of the *Länder* on EU legislative proposals. Finally, there is in the German constitution a wide definition of concurrent powers in which *Bund* law overrides *Land* law. In terms of

FEDERAL BRITAIN

political reality, the success of such a scheme for a federal UK would depend on effective prior consultation and a willingness to reach an agreed negotiating position. But the alternative, to allow the provinces a direct relationship with Brussels, would fragment the UK and, as suggested above, would actually be likely to lessen the influence of the provinces, particularly the smaller ones. Nor is it likely to find favour with the other member states of the EU since they are already concerned with the impact on their position of demands for regional autonomy.

MAJORITARIANISM RUN MAD

THE ARGUMENT THAT, since the development of the British constitution has always been an evolutionary process, there is no need to concern ourselves with the latest set of intended changes is fallacious. As the distinguished constitutional historian and Conservative MP, Sir Kenneth Pickthorn warned:

Metaphors of *evolution* and *growth* are particularly dangerous, because in practice, whether necessarily or not, they tend towards fatalism...people who have this complacency for the mere event often achieve their cheerfulness by assuming that there has been an intention throughout the process and the intention is that which they wish it to be; in other words that, as Providence has moved mysteriously to evolve out of the primeval slime political thinkers, so the genius of the constitution has proceeded at varying pace, but without much deviation, from the barbarism of Hengist and Horsa, through the feudal darkness of William the Conqueror and Edward I, and the crass stupidity of James II and George III, to our present enlightenment and it will go on irresistibly to perfect parliamentary democracy, or to establish the dictatorship of the proletariat, or to submit all human life to the direction of an enlightened bureaucrat, or whatever else.³⁹

There is no parallel with the sturdy oak rooted in an acorn, since it is known that it will not explode into an orchid or an elm. Rather each stage of our constitutional development has been the result of conscious volition, even if the effects of the steps taken and general tendency have more than once differed from what was intended. To think otherwise is a serious bar to understanding the workings of a constitution where so much depends upon political practice.

In effect, such complacent observers are espousing a view which asserts that the constitution is no more than a description of what the government has got into the habit of doing and of what it can get away with. These dangers are accentuated by the prevalent belief that government exists to translate the preferences of the majority into law. It is a point well illustrated by the way in which public pressure since Dunblane has led to the total ban on handguns, but, still more, by the way in which a government spokesman, Lord Williams of Elvel, greeted the passage by the House of Lords of two

³⁹

K. Pickthorn, *Some Historical Principles of the Constitution* (Philip Allan, 1925) pp. 9-10.

FEDERAL BRITAIN

modest exemptions to the general ban with a promise that these amendments would be promptly reversed once the bill went back to the House of Commons. Inherent in democracy must be a respect for individual preferences and toleration for the rights of minorities. Properly conceived, the norm should be decisions arrived at by discussion and the emergence of a broad consensus. For practical purposes, however, it is often necessary to abridge the discussion and advance the process of taking a decision by taking a vote. Since it would clearly run counter to the principles of democracy for a minority to bind a majority, the convention is that the latter should prevail. One of the most distinguished of modern theorists, Robert Dahl, was clearly uneasy about this and an earlier political theorist, Sir Ernest Barker, took the view that if democratic might and sovereign right were to be combined, the “common conviction” about the right of ordering human relations, itself a developing entity, should be rendered into law only after a lengthy process of distillation in the social sphere.⁴⁰ In reflecting upon the constitution, therefore, we should recall Amery’s wise words that there was “no divine right of a mere numerical majority, of X/2 plus 1, any more than of kings.”⁴¹ Denis Brogan, whom he quoted, develops the point with great succinctness:

Free Government is a day-to-day habit, a continuous political training in mutual respect and collaboration, in maximising consent and minimising coercion; it is not, as some simple democratic apologists think, a mere matter of legislative or administrative edicts backed by majorities.⁴²

It is a point which increasingly seems to be overlooked by governments, whatever their political colour. However valuable the original conception of the Community Charge, there is little doubt that in its final form it was fatally flawed. Nevertheless it was driven through with great determination in the teeth of evidence that it was far from acceptable to a majority of the nation. Even more striking, perhaps, has been the present Government’s determination to persevere with Welsh devolution even though it has the positive support of only a quarter of the Welsh people. This cannot be conceived of as a mandate in any meaningful sense of the word. The Government’s belief that it is a mandate highlights one of the diseases to which the British constitution has fallen prey: the claim that a government with a majority has the right to act as it pleases – majoritarianism run mad.

Is the present degree of centralisation really acceptable to the English as it clearly is not to the Scots and the Welsh? The surveys done for the Kilbrandon Commission confirmed that in some parts of England, as in Scotland and Wales, there was no sense of the proximity of the states or of its involvement in the life of the people. Indeed people

⁴⁰ Sir Ernest Barker, *Principles of Social and Political Theory*, (Oxford Paperback, 1961) p.199.

⁴¹ L.S. Amery, *Thoughts on the Constitution*, Oxford Paperback, p.46.

⁴² D.W. Brogan, *The Free State*.

MAJORITARIANISM RUN MAD

have no sense that they are engaged in a process of self-government. While in part this derives from a sense of geographical remoteness, it is more that the central government and legislation is pre-occupied with the ways of middle and southern England – some would say simply with London and the south-east.⁴³ Even the fact that this is not deliberate counts for little, nor has anything changed in the last 30 years. Until very recently our governors have been oblivious of the fact that there is a problem and arrogant because of this lack of consciousness.

Even now there is a *sotto voce* assumption (more apparent to Nevil Johnson during earlier devolution debates) that the devolved assemblies will not rock the boat and that they will defer to London. Not only does the strong lead given by Scotland on devolution give that assumption the lie, but experience even with the short-lived Northern Irish Assembly in 1974 shows it to be absurd.⁴⁴ Another unconscious assumption, evident by talk of devolving powers to parliaments and assemblies rather than of the transfer of governmental powers to a parallel executive, is likely to be falsified as a genuine political executive emerges in Scotland with the potential to challenge its parent's definition of what is in the Scottish interest. Can Wales be far behind?⁴⁵

It is the contention of this paper that a move towards a genuine federal constitution is necessary not simply to contain the political manifestations of devolving substantial executive power, but also to prevent the centre from overriding the wishes of localities and minorities, with all the resistance that breeds.⁴⁶

Competing centres of power

There must be a willingness, if the United Kingdom is to hold together, to accept the possibility of competing centres of power and the mutual checks and balances which are inherent in any real dispersion of power. Nor should this be unacceptable to Conservatives. Noel O'Sullivan has characterised Conservatism as:

...a philosophy of imperfection, committed to the idea of limits, and directed towards the defence of a limited style of politics.⁴⁷

By this he means a style of politics which draws a clear distinction between state and society and between the private and the public sphere. It is a style threatened by the view that majorities must have their way. Egged on by the tabloids, the voice of the people can all too easily become the baying of the mob.

⁴³ Cf. Also the *Daily Telegraph* editorial 'Real Britannia', 24 November 1997.

⁴⁴ There can have been no weaker devolved assembly, but nevertheless it chose to flex its muscles from the start.

⁴⁵ My thinking on this matter has long been influenced by Nevil Johnson, *In Search of the Constitution* (Methuen 1977), pp. 120-21.

⁴⁶ Note the growing strength of the countryside lobby.

⁴⁷ *Conservatism*, Dent, 1976, p.12.

FEDERAL BRITAIN

Acton long ago spotted the dangers. He argued that undivided sovereignty could lead to centralisation, corruption and absolutism and went so far as to suggest that “the presence of different nations under the same sovereignty” was of help by “multiplying associations”. At the heart of his reasoning was a simple proposition:

Liberty provokes diversity, and diversity preserves Liberty by supplying the means of organisation.....The combination of nations in our State is as necessary a condition of civilised life as the combination of men in society.

In the United Kingdom the parliamentary system failed to provide for national claims because it presupposed that the people were one and hence provided an imperfect form of freedom:

By making the State and the nation commensurate with each other in theory, it reduces practically to a subject condition all other nationalities that may be within a boundary.⁴⁸

Implicit in this is the conclusion later reached by a more subtle but less well remembered analyst than Dicey, Henry Sidgwick:

...the development of democratic thought and sentiment so far as it favours liberty and self-government tends in favour of federality. [Federation is] a mode of political organisation by which a nation may realise the maximum of liberty compatible with order.⁴⁹

Traditionally Conservatism favoured “the little platoon” and saw local governance as a way of diffusing power. Shorn of its excrescences, that idea should be received back into the Conservative pantheon. Given the lack of serious debate about the constitution, and more serious still, the absence of any genuine feeling for the practice of constitutionalism, it is necessary to safeguard the dispersion of power and even the rights of minorities.

One problem may be that this would draw judges into politics. But the simple answer is that they are already there – as can be seen following, *inter alia*, the incorporation of the European Declaration on Human Rights into British law. Continental habits have infected British judges and have informed a huge extension in the scope and practices of Judicial Review. Clearly in a more rigid, federal constitution, there would be scope for judicial activity, and it would be sensible to centre that on the Judicial Committee of the Privy Council rather than leave it to the courts. However, it

⁴⁸ Quotations taken from ‘Modern Federalism’ and ‘Federal and Other Component States’ in Sidgwick: *Element of Politics*, 4th edition, Macmillan, 1919, pp. 426-39, 530-50.

⁴⁹ Lord Acton, ‘Nationality’, in *The History of Freedom and Other Essays*, Macmillan, 1909, pp. 220-300.

MAJORITARIANISM RUN MAD

should be possible in the process of defining citizens rights to pin back the judges to a more constitutional role rather than that to which some of them now aspire.⁵⁰

⁵⁰

For the latter, see M. Justice Laws in the Modern Law Review 1993.

CONCLUSION

THE GOVERNMENT HAS EMBARKED on a course of profound constitutional change without any consideration of its dangers. The best safeguard, perhaps the only safeguard, since we cannot hope to close the lid on Pandora's Box, is to contain these possibilities by devising a constitutional and institutional framework which keeps the United Kingdom together. This recognises more fully than Labour the aspirations of the English, Welsh and (possibly) the Northern Irish, but leaves Britain as a major actor in a *Europe des Patries*. Necessarily that framework can only be federal.

That does not necessitate borrowing lock, stock and barrel from the United States or Australia or Canada, or Switzerland; nor even from Germany, although that model has its attractions. We have to evolve federal institutions of our own devising to satisfy the competing claims of the four nations now and in the foreseeable future while recognising their overriding interest in staying together. In the end the bonds which will hold the United Kingdom together have to be rooted not just in a community of interest, but in a genuine "imagined community" that is British. Such feelings, however, which are already in existence, are more likely to be nurtured if they are not left to chance but given institutional and constitutional form.

To those who argue that this is wholly destructive of Parliamentary sovereignty it is necessary only to reply that Dicey himself, its supreme expositor, recognised that Parliament exercised legal sovereignty only and that beyond it sovereignty lay with the British people. If Americans and Germans find no difficulty in expressing that sovereignty through more than one set of institutions with a co-ordinate authority, why should we?

The conclusion is simple. Lopsided decentralisation within what purports to be a unitary state will lead to the Balkanisation of politics and threaten the disintegration of the United Kingdom. A carefully worked scheme of federation, on the other hand, is likely to make governance more effective and more accountable to its various publics; it will foster the practice of democracy and meet that sense which most British people have of showing a number of different identities. Above all perhaps, it will limit the ability of the central government to embark on the kind of ill thought out scheme which the Blair Government has set in train so far as the constitution is concerned.

A REPLY BY FERDINAND MOUNT⁵¹

MY FIRST EXHIBIT – Exhibit A, as they used to say in courtroom dramas – is the author of the pamphlet: John Barnes. In another country Mr Barnes would be something of a legend in local government. He would be known as the Strong Man of Maidstone or the Lion of Lewes because his role in local government spans both Kent and East Sussex. His bold experiment in education vouchers would be admired, derided and imitated by other councils. But as it is, he is better known to most of us as the co-author of that admirable *Baldwin: A Biography*, and also now of this provocative and far-reaching pamphlet.

That says something about the standing of local government in this country, which is a dim and obscure pursuit; so much so that the local government minister recently implored local authorities to try anything to make themselves more attractive to voters: elect a mayor, bring in a cabinet system, let ‘em vote in Sainsburys. The one thing that would make the difference would be to give local authorities back the power that once made them interesting: the power to tax and the responsibility of spending the money that they raised in taxation. The eclipse of local government over the last century can be plotted by one simple statistical comparison: in 1900 local authorities raised about 90% of the money they spent; in the 1990s, after the poll tax, the proportion of locally determined expenditure has fallen as low as 18%; in the last few weeks John Prescott, with unwonted delicacy, has begun the process of reviving the taxing powers of local councils; he will probably have a hard time persuading people of its virtues – but it does have great virtues.

I come to this debate with no settled or fiercely held views about specific reforms. My one settled conviction is simply that our constitutional arrangements are decayed and need reform; repair; by reform, I mean not wholesale, nor in such a manner that the outcome would be unrecognisable to previous generations, but in a piecemeal fashion that ought to be as congenial to sluggish Tories as to hyperactive Whigs.

I am not going to say anything much about Europe. I believe the case for and against internal reform is much the same whatever our relations with the European Union. Any reform will of course have its wider consequences, but the case stands or falls domestically. The Conservative Party, which used to pride itself on being the party of little platoons, has in recent years been criminally negligent at the local and civic side

⁵¹ Ferdinand Mount is editor of the *Times Literary Review*, former head of the No. 10 Policy Unit and author of *The British Constitution Now* (Heinemann).

FEDERAL BRITAIN

of politics. It needs now to take at least a little time off from its obsession with Europe to concentrate on the home front.

The centralisation of government

My diagnosis springs from a fairly straightforward reading of our history over the past century or so; it was one I thought most Conservatives shared, and was surprised to discover that they did not. The diagnosis goes as follows.

Two world wars have tended to centralise almost everything – industry, agriculture, welfare, education and, of course, government. Before, during and after two world wars, from about 1870 onwards, heavy doses of collectivist legislation began, intensifying that centralising process. Take education alone: Forster in 1870, Balfour in 1902, Butler in 1944, Crosland in 1965 and Baker in 1988. In the 1980s and 1990s those twin ratchets of war and socialism were partially reversed with great zest and tenacity by Margaret Thatcher; but in many fields, things were left the same if not more centralised still.

Over the last ten years I have come to think we need to find ways of unclenching this clenched fist of power. There are three phases or aspects to this: first, the denationalising of all those industries and institutions which had wrongly been taken into public ownership – terrific, almost total success on that. Second, and more difficult, the self-management and professional independence of institutions which were to remain mostly State-financed, such as hospitals and schools – partial success with some of the good work now being undone by the Labour Government (as in the treatment of grant-maintained schools); others are essentially being kept, such as the expansion of fund-holding among GPs. What I would call, if I were Chinese, the third modernisation, is the modernisation of our political institutions which have also fallen victim to the centralising tendency.

Most Conservatives would agree about the first two modernisations but most, it would fair to say, are either uninterested or actively hostile to the third modernisation, the constitutional one. It is the other way about with Liberal and Labour supporters who were at the time, whatever they may say now, hostile to Margaret Thatcher's plans for work on the first two but enthusiastic about the third one. Those of us who are keen on all three are a rather small faction.

In fact I think I am a member of a smaller faction still, because even amongst those Conservatives who do believe in some measures of constitutional reform, there is a cleavage between what might be called the 'Giant leapers' and the 'Step-by-steppers'. John Barnes is a Leaper and for a reason which he regards as pressing, even crucial: his analysis is overshadowed by fear of break-up of the Union, of a shift to Balkanisation of the UK. He believes in a constitutional settlement of the American sort, one which will halt the impending conflagration by entrenching a fundamental document – a sort of huge firebreak across our constitutional arrangements.

I do not share those feelings of impending doom. It is a political fact that any process of constitutional refurbishment in Britain is bound to be a gradual one, for two reasons: first, because we do not have in this country at present a sense of looming

A REPLY BY FERDINAND MOUNT

catastrophe which could lead us to accept a giant ambitious new settlement; and second, because step-by-step is usually the best way to go about things.

The need to reinvigorate Parliament

We agree about many of the steps which need to be taken. But he views progress so far more gloomily than I do. What has happened to date shows that, as in the past, it is perfectly possible to make sensible reforms within the traditions of parliamentary supremacy. The first step in any programme should be to revive the vigour of Parliament and that is why reform of the House of Lords is not just a sop to democratic sentiment but is a serious contribution to the scrutiny of legislation and control of the Executive. This ‘thinning’ of our constitution – in which the Crown, the Lords and the judiciary successively retreated into a kind of shy impotence – was extremely bad for the all-conquering House of Commons which has developed a cynical attitude towards power, composed in equal parts of arrogance and sloth.

An occasional conflict between the two Houses, far from being bad for democracy, is an extremely healthy thing, forcing the lower House to re-examine its arguments or alter its proposals. It would also help to reduce the hermetic complacency of the Commons by teaching it what the old Norman French called *entrecommuner* between the two Houses – an important feature of the American system and, in the old days, of our own too.

So far it has been the judges rather than the parliamentarians who have snatched up the baton, or mace. It is a melancholy reflection for parliamentarians that in framing regulations or legislation these days, civil servants are more worried about the judge over their shoulder than they are about the wrath of the Commons. The long delayed introduction of the European Convention will intensify the Government’s fear of judicial challenge, although in practice judges have been referring to it for years, but I do not view this prospect with alarm – especially since our new *éminence grise*, Cardinal Irvine, has rightly chosen the so-called “New Zealand” option: that of the court merely informing Parliament where it thinks some provision is in breach of the Convention rather than the over-ambitious – or Canadian option – of empowering the judge to strike down the provision as unlawful.

Some advantages of devolution

I only come now, after those measures, to the territorial reform and to the proposed Parliaments for Scotland and Wales, and for any arrangements which we want, or do not want, to make for England. If any of these new assemblies are given a substantial measure of power, such as the Scottish one is supposed to have, then, so we are told, we risk the break-up of the United Kingdom. If, on the other hand, the power is a very modest amount, as is proposed for the Welsh Assembly, Conservative critics will deride it as a mere talking-shop. These two lines of criticism need examination.

Conservatives today seem to have become almost obsessively political minimalists. They dislike talk. ‘Action, not words!’ was Ted Heath’s slogan long before it was Tony

FEDERAL BRITAIN

Blair's but it could have done just as well for Margaret Thatcher. Modern Conservatives prefer the strong silent men of the boardroom to the chatterboxes of the Council chamber. Ralph Harris and Arthur Seldon have taught us to prefer "exit" to "voice" as the most effective means for ordinary people, especially the inarticulate, to make their desires known. There is a very good case to be made for that.

All the same, I would like to flag the possibility that we may have gone too far in this direction; I believe that a happy society demands a substantial amount of public debate at all levels; that local authorities should not be seen as mere service providers, but also as places for the ventilation of grievances, for communal reflection and for conversation. Talking shops, in short, are what parliaments are – and none the worse for that.

The other line of attack is that these Assemblies are too strong; they threaten the survival of the UK. This is a development of Bagehot's and Dicey's conviction that federal government of any kind is essentially a weak form of government. In their day they did have some excuse for that belief: the United States had barely recovered from civil war; Germany was a gleam in Bismarck's eye; Australia did not exist. Today it is rather more difficult to think of federal governments, or semi-federal governments, or creeping federal governments, as intrinsically weak. A highly-federalised country like Australia may seem over-governed, with a wedding-cake of a town hall on almost every High Street. But another way of looking at it is that this is a way of filtering and diffusing grievances, of involving as many people as possible in political activity – and hence in consent to the actions of government.

In this country, on the other hand, we have a very small class of professional politicians, parties which are withering away before our eyes, a Parliament whose proceedings newspapers no longer bother to report, and towns and cities which, to put it mildly, are not exactly bursting with civic pride. There can therefore be no great harm in reviving – or, in the case of Scotland and Wales, inventing – sub-national units of government. At first I was dubious about the lack of fiscal responsibility in the Scottish proposals, but as the proposals have hardened up it has become clear that in fact the power of the Scottish Parliament will not be over income tax, which it will not be able to put up and which it will not have the money to bring down by that famous three pence; it will be over local taxation, which is where it should be. There it will have considerable freedom either to over-tax or under-tax its fellow-Scots.

The case for the counties

That will not work in England. I do not see how one can get regional assemblies to levy taxation if they have no historic resonance, no authority. The difference between Catalonia or Bavaria, on the one hand, and Mercia or Wessex on the other, is obvious.

The legitimate unit for us as Conservatives surely must be the counties. We must revive them from the dismal straits to which the debacle of the poll tax reduced them. Many are older than the Westminster Parliament. They command a kind of quiet loyalty

A REPLY BY FERDINAND MOUNT

of which MPs seem to be oblivious, though it is strongly felt on the ground. Most of them are large enough to oversee a decent system of schools and hospitals; and, where they are not, they can combine, as many already do in the case of the police. Lancashire's population, if one includes its great cities, is as big as Scotland's; Yorkshire has more people in it than Wales.

What the 'clenchers', so to speak, have not quite understood is that if there is genuine decentralisation, then the West Lothian question ceases to be worth asking. All right, so English MPs would not be able to vote or ask questions at Westminster about Scottish schools and hospitals; but then, with genuine decentralisation, a whole range of questions about English schools and hospitals would not come to Parliament either. Parliament would revert to something closer to what it was in its glorious days: the ultimate taxing and law-making authority; not an all-purpose interfering manager.

The resilience of the UK

Last of all, I come to the UK. There is another curious alliance at work here. On the left, nationalists and radicals argue that "Ukania", as they sometimes call it, is essentially an invented nation with no real life of its own, cooked up by Hanoverian propagandists to keep the Scots quiet with only the Empire to prolong its life. Now the Empire has gone, why should it survive? Many people on the right in a strange way share this analysis, only they fear the break-up rather than welcoming it. The United Kingdom seems to them something which is both infinitely precious and infinitely fragile and it would be criminally irresponsible to put it at risk by introducing a separating agent in the form of a Scottish Parliament.

But is there not a submerged contradiction here? If the United Kingdom is infinitely precious to enough people, then it cannot be quite so fragile. Our single history over the past two or three centuries, our mingled families, our shared literature and religion, cannot have left such faint indentations upon our souls. The whole enterprise is sturdier than that. It is robust enough to endure – and even to enjoy – a modest programme of constitutional reform.

A REPLY BY NOEL MALCOLM⁵²

LIKE JOHN BARNES, unlike Ferdinand Mount, I am worried about the long-term future of the Union. Unlike John Barnes, I believe that moving towards a federal system is more likely to hasten the break-up of the Union.

I do not argue from any general, universal principles of what federalism does. It is not sensible to set out laws that federalism always has this effect or that. Federalism can have many different sorts of effect, depending on the human material it has to work on, the circumstances in which the State was created, whether it was created by units coming together or a larger unit dividing itself up, and so on and so forth. In particular, the political dynamic of the process which led to a federal state being set up must be studied. If you have a dynamic where the motor force is the desire to do something about a potentially separatist movement in one or two elements of the State, which is more or less what is happening in Spain, the implications of federalism, and what it means for the further likely progress of the dynamic, are very different from what you have in the case of either, for example, the original American states coming together or the larger state dividing itself up. Every case will be different.

Nor am I going to talk about the whole range of possible benefits at different levels of a federal system, even specifically to this country, in the way that Ferdinand Mount has touched on. And I am not going to consider questions of possible improvements to civic life, to local democracy, to reforms of administration. There may well be plus points there; there may be some minus points. For me, there is one overriding aspect to consider first, before I can come to those sort of merits and de-merits of the case; that is, the Union and the long-term question of whether the move to federalism may hasten its break-up rather than halt it.

Sentiment versus structures

John Barnes' thesis is that what Labour has done already with Scotland and Wales is starting a rather unpredictable and uncontrollable slide; that we are not sure what this might lead to in terms of competitive devolutions; that it would be much better to halt the slide with a clear, stable and, as he put it, rigid constitutional structure so that people would know what was what; and that this would provide new stability for the

⁵²

Dr Noel Malcolm has been Foreign Editor of *The Spectator* and a political columnist of *The Daily Telegraph*. He is the author of *Sense on Sovereignty* which was published by the Centre for Policy Studies in 1991.

A REPLY BY NOEL MALCOLM

United Kingdom. I fear this is a classic example of over-estimating the power of structures. A structure may be rigid but the effects it has upon the people who inhabit that structure, who have to work with it, or who have entered into it for particular reasons of their own, may turn out to be very different and may lead to a further loss of rigidity rather than an increase.

My great-grandfather was interested in the British Empire and in an early part of his career was an Assistant Under-Secretary of State for the Colonies. He published a pamphlet, the title of which has stuck in my mind: *Sentiment, the Bond of Empire*. His argument was that we could discuss many different improvements to the administrative and constitutional structure of the Empire, all of which were worthy and important in their way; but the key to the Empire as a whole was sentiment – the sentiment of the people who belong to the Empire. Do they feel some basic loyalty to it? Do they want to continue to make it work? Do they want to be involved in part of that Empire? If you have that sentiment, the Empire will continue. If the sentiment goes, it cannot be put back together again by imposing an improved structure.

This contrast between sentiment and structure is also relevant in the context of the European Union. One often hears it said that one of its great achievements in the last 40 years has been to prevent war in Western Europe: it made war between France and Germany impossible. I suspect this is the wrong way round. The fact that the European Community was able to flourish and develop in the way that it did was a *symptom* of the lack of belligerent tensions – or lack of potentially belligerent tensions – between France and Germany or within Western Europe. Sentiment, in a sense, is the primary thing. If there had been sufficient reasons for Frenchmen and Germans to have belligerent sentiments towards one another, no structure, however cleverly involving functionalism and the linking together of industries and so on, would have served to keep it in check. Of course, structures can have important effects upon sentiment. My point is that the effects are not simply direct reflections of the qualities of the structure; they can occur for all sorts of indirect and unpredictable reasons. It is not safe to assume that a more rigid structure for the United Kingdom will produce a more rigid sentiment of allegiance to it.

An English consciousness?

We can identify some broad effects of a new constitutional structure upon sentiment. Let us assume a federal constitution in its simplest possible form: that is, that the federal units of the United Kingdom are Scotland, Wales, Northern Ireland and England. In such a federal structure, a new and potentially far-reaching influence could well be created: a kind of new English national consciousness, as opposed to a Scottish identity, a Welsh identity and so on. There may indeed be some political dynamic in which the Conservative party wishes to boost the powers, prestige and importance of the English Assembly because that is the one arena in which it thinks it can actually form a government. In that case, the Conservative Party – which, for all its recent troubles,

FEDERAL BRITAIN

remains a very powerful force in the political life of this country – will have a vested interest in boosting this English Assembly as a focus of political identity. In a curious irony, the Conservatives would thus do for England something very similar to what the Scottish National Party is doing for Scotland through the Scottish Assembly.

What happens when you develop English national consciousness? As John Barnes has pointed out, we are very unfamiliar with this. At the moment, English people tend to confuse the words ‘England’ and ‘Britain’; any journalist will know that every now and again you get a letter ticking you off from some hyper-sensitised Scot who says you wrote ‘England’ when you should have written ‘Britain’ or the ‘United Kingdom’. Curiously, this confusion, or mental laziness, or whatever one calls it, in the average English mind is in fact one of the things that really holds the whole United Kingdom together. It is of fundamental importance, given that the English, statistically, amount to 83% of the United Kingdom’s population. All the talk of the West Lothian question presupposes that people judge and classify politicians in national categories. The West Lothian question only becomes dangerous when the average Englishman thinks that these are Scots who are deciding our future. At the moment the English do not seem to think like that. Every morning on the Today programme there will be a government minister or a cabinet minister who will, in many cases, be speaking with a Scottish accent. I do not believe that the English are sitting there at their breakfast tables saying ‘My God, we’re being ruled by the Scots!’ What they think is, ‘We’re being ruled by Labour’. They do not mind that, because Labour is a UK party and many of them voted Labour; even those who did not vote Labour, do respect the basic constitution of the UK. But once separate primary political consciousnesses have been developed that make people think of themselves first of all as English as opposed to Scottish, and so on, then the sort of mentality is developing in which issues like the West Lothian question become acute. Conversely, one might find similar problems arising on the Scottish side. In a federal UK, the SNP has much more room to get on with its job of persuading the Scots that they are primarily Scots and that their rights as Scots can only be fully satisfied if they are fully independent.

Statistical imbalances in devolution

Consider how the federal legislature might work in the UK. One possibility is that there is a fairly straightforward proportionality of seats to population – in which case the Scots will have about 9% of the MPs in the federal legislature. They will be thinking of themselves, for the first time perhaps, *en bloc*, as the Scots in the federal legislature. It will be very easy for Mr Salmond to say to them that it is intolerable to have only 9% of the deciding voices in what happens to their destinies on all high and important matters, and that they cannot be thus treated. If, on the other hand, allowances are made for that, by specially weighted arrangements perhaps in an Upper House or Territorial House, then there may be opposite complaints from the English about why extra votes should be given to

A REPLY BY NOEL MALCOLM

the Scots. There are many further problems of that kind, most of which derive from the extraordinary statistical imbalance between the 83% and the 9% and the rest.

The other basic way of carving up the United Kingdom into a federal system is by dividing England into smaller units, whatever these may be. Ferdinand Mount's proposal to re-establish the county as a natural unit of government is new to me, but the main objection to the "regions" scenario is, as John Barnes has recognised in his paper, that many of these regions will seem very arbitrary and artificial to their English inhabitants. The problem is particularly acute in the case of the so-called South-East but there are also innumerable other problems. Should Liverpool and Manchester be put into one unit? And so on. What is absent is a sense of natural political allegiance and identification of the sort that the Scots already, or potentially at least, have ready-made for them.

The problem of Europe

The other problem with regions is that, contrary to what Ferdinand Mount says, one cannot look at this problem without constantly bearing in mind Europe's winged chariot just behind one. This is all happening in the context of the European policy of promoting a Europe of the Regions. The logic of it can be fairly described as a "divide - and-rule" policy, even if that may be unfair to the particular motives or mentalities of some of the people pushing the policy along. Nevertheless it is clear that a kind of strategic alliance is emerging between the regional units below national government level and the supra-national institutions in Brussels. England will be carved up into little bits; each bit will be given those particular domestic powers that John Barnes has specified. His paper contained the very striking statement that 'of course' the UK federal legislature would retain all the really important powers over the things that matter: foreign policy, defence, large-scale economic policy and management of the currency. These are exactly the areas of policy that Europe has in its sights and, in some cases, will probably be taking direct control over fairly soon. It is neither paranoid or alarmist to say that perhaps ten or twenty years further down the line one might find that most of the important decisions in all those areas are in fact in the hands of supra-national institutions in Brussels. When other governmental powers have been taken down below the national level to the small regions, even the term "supra-national" begins to lose its point because one is no longer talking about something involving nations co-operating, as they do at the moment in the Council of Ministers; one is talking about a purely European structure.

My final verdict on the title of this debate is: perhaps no longer unthinkable – but still undesirable.

A REPLY BY LORD ALEXANDER⁵³

THE LAST CONSERVATIVE GOVERNMENT had immense achievements to its credit, for which it is not being given public appreciation at present: privatisation; deregulation; liberalisation, crucial to the City; modification of relationships with trade unions; creation of an atmosphere in which business can flourish; and, during its latter period in office, a national consensus that inflation was an evil and that low inflation was the crucial foundation of a stable economy. That is a remarkable raft of achievements. It is therefore understandable, if unfortunate, that at constitutional level there was very little change.

The constitutional lassitude of the Conservative Party

The last Government did create opportunities for self-management of many institutions such as hospitals and schools which had become too remote, too distant, from the constituent groups they served. But on the wider constitutional front there was a tremendous lassitude. The attitude was not quite the same as Lord Melbourne's before the great Reform Acts: 'Reform, reform; are things not bad enough already?' but it was undoubtedly a comforting belief that our basic constitutional arrangements needed little, if any, change. In that, our party failed to respond to the mood of the people.

There were plenty of advance indications that constitutional change had to be considered. Opinion polls, for example, showed that a very high percentage of people wanted protection for human rights – yet it was left to a Labour Lord Chancellor to drive through the long overdue incorporation of the European Convention on Human Rights into our own law. To any advocate who had been to Strasbourg to represent either the government or applicants in human rights cases, it was faintly farcical that one had to go before a court of judges from all over Europe who listened to argument in silence, without any of the dynamism of the Socratic dialogue of English court cases, yet the same points could not be taken before our own judges. It was very strange that the last Government – indeed, the last Lord Chancellor, Lord Mackay – wanted to argue that human rights of the kind contained in the Convention were non-justiciable. We allowed them to be justiciable before Continental judges but were not prepared to allow them to be justiciable issues before our own judges. We really failed to patriate what had become probably our most important constitutional document.

⁵³

Lord Alexander of Weedon QC has served as Chairman of the Delegated Powers and Deregulation Committee in the House of Lords and has recently been appointed to the Commission on Electoral Reform. He is author of *The Voice of the People: A Constitution for Tomorrow* (Weidenfeld & Nicolson, 1997). He is also Chairman of the NatWest Group.

A REPLY BY LORD ALEXANDER

Subsidiarity begins at home?

Looking at it now there is probably little dispute – and this leads into the federal debate – that people actually want more say in how they are governed. To quote a leading politician: ‘People in Wales, like people everywhere, want more control over their own lives.’ The speaker, almost exactly a year ago, was William Hague when Secretary of State for Wales. He was absolutely right. We live in a country in which there have been very few constitutional changes since the completion of the universal franchise in 1928. Yet perhaps there have been two really important trends since then: one is that people, on the whole, are better educated and certainly have more access to information, more leisure and time to consider events; added to that is the fact that in the same period there has been an increasing intrusion by government into very many aspects of people’s lives. A J P Taylor once said that until August 1914, a sensible law-abiding Englishman could pass through life and hardly notice the existence of the State beyond the post office and the policeman. People’s growing education, opportunities and expectations from life, combined with the greatly increased role of the State, call for a re-evaluation of how they may contribute more to decisions about the way they are governed. Furthermore, emasculation of local government over a 20 year period has reinforced the need to reconsider the existing settlement.

The last Government was particularly eloquent at European level about the principle of subsidiarity. We did much at Maastricht and Edinburgh to try and have this embedded in European thinking. It may not yet be sufficiently embedded in European law, but that is a different issue. We did it, not as a matter of visceral anti-Europeanism, but because it reflects what President Chirac described a year ago as the ‘common sense principle’ that decisions should be taken as close to the people as possible. That sentiment has been echoed by Helmut Kohl, living as he does in a federal society and seeing, as he has, Bosnia, the dissolution of the Soviet Union, and the impetus of nationalities towards having more of a say in their own affairs.

What the last Government did not do was to begin to apply subsidiarity at home. We were unprepared to pass decisions down to a local level. This issue has been around for some time. The Royal Commission on the Constitution (the Kilbrandon Commission), reporting in 1973, said that the maintenance of a healthy system of government required that as many as possible of the functions of government which have to be carried out locally should be devolved to the local authorities, and that in the exercise of those functions the local authorities should be subject to a minimum of control.

Reforming Parliament

In assessing that principle we ought to make more than a glancing reference to the position of Parliament. In this country we tend to trumpet the doctrine of the sovereignty of Parliament at the centre to a dangerous and misleading extent. It was, after all, the Conservative Lord Hailsham who in 1978, when in Opposition, wrote *The*

FEDERAL BRITAIN

Dilemma of Democracy – arguably one of the best books on constitutional reform written in the last 30 years – in which he coined the phrase ‘elective dictatorship’. That was before the elections of 1983, 1987 and 1997, all of which had the common factor of bringing in Governments with majorities of well over 100 on a minority of the vote. Add to that the dominance of the whips and the extent to which we have moved from the Burkean concept of democracy, and it is clearly not surprising that Tony Blair, when in Opposition, said that we were the most over-centralised country in Western Europe. To all that, add the need for change in the House of Lords.

For nine years I have found it a great privilege to be in the House of Lords; standards of debate are often very high; the consideration of legislation is good – far better than in the Commons. But ultimately the House of Lords is unprepared to push its legitimate constitutional powers, which include the delaying power, as far as it is entitled to. This is because of a feeling of a lack of legitimacy; a feeling that if it does push those powers it is setting itself against the representatives of the people. It is easier to speak of reforming the House of Lords than to say just what form that should take: should there be elections from the regions; should there be some appointments; what should be the mix? The position must be looked at very carefully, though I am not convinced by the view that, first, the right of the hereditary peers to vote should be abolished, and then and only then, an alternative system be devised. To reform the House of Lords sensibly, we must avoid the kind of unholy alliance – or perhaps very holy alliance – between Enoch Powell and Michael Foot which bedevilled the last set of proposed reforms.

The emphasis on federalism should not blind us to the fact that whatever system we have must be underpinned by a sound and properly working parliamentary system at the centre: if Parliament does not function efficiently and command respect, the demand for greater federalism and greater devolution will undoubtedly grow.

The impetus to devolution

Following the arguments on constitutional arrangements as a layman, when writing a short book of essays, was very difficult. My personal point of departure was as a lawyer with an interest in human rights, as Chairman of Justice, and with the feeling that a people, or a nation, has the right to self-determination. On that basis it is conceptually impossible to deny, say, the Scots, the right to that self-determination. Undoubtedly in Scotland there has been, for a very long time, a disenchantment with government and a disenchantment with the centralisation of power. Add to that the extent to which Scotland was sometimes used as a testing-ground for pilot projects in the United Kingdom (for example, the legal aid changes and, more cogently, the community charge or poll tax) and it is not surprising that belief in devolution has been resurrected north of the border.

Is devolution necessary? It is seen by some as the first step to ending the union of the United Kingdom. Others see it as necessary in order to maintain that Union. To quote Lord Hailsham again, from the same book:

A REPLY BY LORD ALEXANDER

Rightly or wrongly, I am convinced that if we wish to retain the unity of the United Kingdom, we shall be driven to set up subordinate legislative assemblies in Northern Ireland, Scotland, probably in Wales and, I would expect, in various parts of England.

I appreciate that his views may have changed over the last 20 years, but at that time that was his view. He was able to point, as we can all point, to plenty of federal structures which work well: Germany, the United States, Australia. According to my personal observation of those countries, this devolution of power is necessary for the union of different peoples. In order to secure a union between Western Australia and New South Wales, which are as far apart as are London and Moscow, it is very important that Western Australia should in many respects have its own government. In order to secure a union between Massachusetts and California across time zones and with very different economic circumstances and cultures, it is essential that there should be the degree of flexibility and a lack of monolithic control that exists in a federation.

The problem for the United Kingdom is that while one can see in Northern Ireland, Scotland and Wales clear areas for regional or national government, it is much harder to do so in England. We have administrative regions, but they do not have clear identities; they do not gel, as one might say that Mercia and Wessex once did. It has been suggested that the counties could play a larger part, but I suspect that few of the counties would be in a position to create a self-governing parliament; nor would it be desirable to the extent that this has been done in Scotland. It is hard to see, and this is one of our principal problems, how we could replicate in England what people are seeking for Scotland and Wales by simply putting English regions together. This problem is not newly spotted. In 1996, the Constitution Unit reported:

Devolution to Scotland takes its place in a package of proposed reforms to the UK political system. It will in any event itself promote further change. It will open up for scrutiny parts of the political system which have remained relatively hidden to date: distribution of resources, of inward investment, of gains from European policies, and the attitude of Whitehall ministers and departments to Scottish issues.

The West Lothian Question

While the West Lothian question is not an insoluble problem (as some in our party have presented it), it could nevertheless create tremendous difficulties. It may not do so in this Parliament because of the balance of the arithmetic, but if the day ever comes when English issues are decided on a vote in which the decisive factors are the votes of Scottish MPs who have no constituency interest, we shall be in for a fairly torrid debate. This issue is one which should be confronted before such a debate arises. The essence of the our parliamentary system has been that Members represent constituents; on the present

FEDERAL BRITAIN

arithmetic, however, one would have 72 Scottish MPs deciding English issues – yet representing no constituents affected by the decisions. Gordon Brown would be deciding issues dealt with in Scotland by the local parliament, not for his constituents of Dunfermline, but for those of Edmonton. It is hard to imagine how that situation could last. One need only look at the figures cited by John Barnes to see the potential for a growing resentment of the way in which the cake, under the Barnett formula, is allocated. It is remarkable that this has not already become a major issue, although in Cornwall, for example, one hears people say that they receive far less of the cake than they think they deserve. It may well become contentious under devolution. That said, it seems that we have to live with the fact that devolution is going to happen and try to make it work.

The importance of local government

So far as England is concerned, the situation will be even more asymmetrical if the powers of local government are not strengthened and enhanced. In his somewhat esoteric book on local government, written in 1899, Blake Odgers says:

The parish meeting was the cradle in which our liberties were nursed; it was the school in which our forefathers learned those lessons of self-control, self-help and self-reliance which have made the English nation what it is. Slowly and gradually they learnt them, but by such lessons alone does a nation rise to a true conception of the meaning of liberty and the methods of self-government.

Add to that, virtually a century later, the 1996 report of the House of Lords Select Committee on Local Government:

If nothing is done very soon to strengthen the position of local government, there is a danger that it will be allowed to wither away from sheer neglect. Whilst no central government is likely to abolish local government, there is a risk of a continued attrition of power and responsibilities away from local government until nothing is left.

One of the remarkable features about the lack of a constitutional settlement in our country is that local government has no entrenched powers. It only has such powers as Parliament, often acting on the fiat of central government and with an instinct for self-centralisation, grants to it. Although only symbolic, the signing of the European Charter of Local Self-Government is a first step towards rectifying this situation.

Rate-capping must go – subject possibly only to the intervention on rare occasions of the District Auditor to surcharge. Surcharges remain legitimate; they were not created by Mrs Thatcher to deal with Derek Hatton; they have been in existence since 1879. As my friend Mr Blake Odgers said in 1899:

A REPLY BY LORD ALEXANDER

In one parish a sparrow shooting-club for the farmers had for five and twenty years been supported by the highway rate. Among other items of disallowed expenditure, we found champagne and plovers' eggs, visits to the theatre, journeying expenses when no journey was undertaken, presentation of portraits, suitable demonstrations on the Chairman's wedding-day, memorial keys and the like.

One must not be so naïve as to think the check of the District Auditor, as well as that of democracy, is not needed on local government.

The electorate is not currently interested in local government. Fewer than 40% of people able to vote do so. Local government's lack of effective powers may be a contributory factor. This, in turn, increases the risk that fewer and fewer good people are willing to become involved in local government.

Devolution will happen in Scotland and Wales and we must try to live with it, manage it, and preserve the United Kingdom. The West Lothian question may prove to be a flashpoint but what is needed in England is, at the very least, a redressing of the imbalance by strengthening local government and ensuring that local regional agencies give the maximum subsidiarity which can be achieved short of individual provinces, states or *Länder*. If the day ever comes when Scottish devolution is working spectacularly well, and when groupings locally have come closer together, then it will be open to some regions like, say, Yorkshire and Lancashire, finally to conclude the Wars of the Roses and, without merging their cricket teams, to stand side by side and create a region and seek regional government. This has to come, if at all, not by the dictates of the government but rather as a French menu might say, *selon demande*.

SOME RECENT CPS PUBLICATIONS

THE GHOST OF TORYISM PAST: THE SPIRIT OF CONSERVATISM FUTURE

£6.00

Michael Portillo

The full text of Michael Portillo's historic speech to the Centre for Policy Studies Lecture at the Conservative Party Conference at Blackpool, 1997

A brave and electrifying speech... It may in time prove to be the most significant speech offered by a Conservative in Opposition since Sir Keith Joseph's embrace of monetarism some 23 years ago – Leading article in The Times

THE DEARING REPORT- A PERSONAL RESPONSE

£7.50

Professor Anthony O'Hear

The real danger in the Dearing Report is not the proposal to introduce student fees but the more insidious threats to the concept of the traditional university. Professor O'Hear shows that the Report's recommendations must be rejected if the university as a place of scholarship and learning is to survive.

...a searing indictment – Lewis Smith, Daily Express

BLUE SKIES AHEAD

£7.50

James Bethall, Simon Brocklebank-Fowler, Andrew Honnor & Andrew Reid

By the time of the next General Election, the Conservative Party will, on current trends, have ceased to exist. Its membership is declining; is ageing; and is out of touch with the sympathies of the great majority of the British population. The authors call for practical steps to be taken so that the Party can be elected to government again.

...a withering critique – Nicholas Timmins, Financial Times

THINK MINISTER...

£7.50

Professor Philip Norton

While the constitutional framework of the United Kingdom is fundamentally healthy, there is a crisis in the way that government works. New pressures on ministers – including those from Brussels – need to be countered. Above all, government must learn to look ahead not to the next press release but to the next five years.

...a brilliant analysis – Christopher Fildes, Daily Telegraph

A Subscription to the Centre for Policy Studies

The Centre for Policy Studies runs an Associate Membership Scheme which is available at £55.00 per year (or £50.00 if paid by bankers' order). Associates are entitled to all CPS Policy Studies produced in a 12-month period (of which there at least ten); previous publications at *half* their published price; and (whenever possible) reduced fees for the

For more details please write or telephone to:

The Secretary

Centre for Policy Studies

57 Tufton Street, London SW1P 3QL

Tel: 0171 222 4488

Fax: 0171 222 4388

website: cps.org.uk

FEDERAL BRITAIN
conferences which the Centre holds.