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Direct Democracy is a group of 38 Conservative MPs, MEPs, MSPs and activists dedicated to the principles of localism and the devolution of power. The Localist Papers are an examination of how these principles might apply to specific fields of policy. They are not manifestoes, and not all our supporters endorse them in full. Rather, they explore some possible ways in which power could be shifted from the bureaucracy of the central state to local communities and individual citizens.

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The Localist Papers

Open Politics

1. Summary

Democracy in Britain has been undermined by successive governments. Years of centralisation under the Conservatives and a decade of constitutional vandalism by Tony Blair have eroded the public's faith in the ability of democratic politics to make a difference. Fewer people than ever vote. The political process is increasingly distrusted.

What can be done to revive our failing system of "post-representative" democracy?

This paper advocates a coherent package of direct democracy. Power must be handed away from remote élites down to individuals and communities. The political process must be opened up. Instead of being the preserve of an aloof political caste, politics should be given back to the people. The process of politics itself needs to be opened up with:

- **A right of initiative** so that ordinary voters can help set the political agenda
- **Open primaries** so that people, not party hierarchies, select candidates for office

The British constitution needs to be reformed to ensure that the elected legislature is better able to hold the executive and the permanent civil service to account. This would involve:

- **Abolishing the Crown Prerogative**
- **Introducing sunset clauses on legislation**
- **Reforming the upper legislative chamber**
- **Holding Parliamentary hearings to ratify senior appointments to quangoes**
- **Making judges more accountable for how they interpret the law**
- **Repatriating power from Brussels**

In addition, many of the functions currently carried out by central government could be better carried out locally. Local government should be set free. This would involve:

- **Devolving power from Whitehall to the town halls**
- **Making local councils self-financing**

2. Broken democracy

There are many unfortunate legacies of Labour's decade in power, but perhaps the most worrying is the damage Tony Blair's regime has done to the health of British democracy, politics and our constitution. Fewer people than ever vote; politicians are despised and distrusted to an unprecedented extent; even the Union itself seems on the verge of collapse.

There are two central problems, and they are both equally damaging. In search of a quiet life, politicians have abdicated responsibility over a range of issues.

Remember the words of Sir Humphrey Appleby, who boasted that “since 1832, we have been gradually excluding the ordinary voter from government”. When challenged on this, he responds: “If the right people don't have power, do you know what happens? The wrong people get it. Politicians! Councillors! Ordinary voters!” Localism means transferring power away from the “right people” – and revitalising Parliament and British democracy.

A bewildering and costly range of quangoes – unelected bodies unaccountable to elected representatives – have taken control of many of the functions of government. Much of our legislation is now made not in

Westminster but in Brussels.¹ Bureaucrats, not ministers, make decisions within the civil service. Vital decisions – such as whether to go to war – are taken on the Prime Minister's sofa, not by Parliament. Our laws are still passed by Parliament, but they are reinterpreted according to the whim of activist judges.

The growing remoteness of the political system is one reason why people have lost faith in politicians and have turned away from elections: they know that no matter whom they elect, it will not make much difference to their daily lives. The independent MP for Wyre Forest, for example, was elected solely on the issue of preserving a local hospital – yet he is as powerless as any of his colleagues to bring that about.

But there is another problem. Those areas which ministers do retain responsibility for appear to have been grossly mishandled. The health service and education system are stifled by bureaucracy, their workers constrained by regimes of centrally-imposed targets, the meeting of which, rather than the welfare of patients or pupils, becomes the first priority of public-sector workers. Policing, too, is in crisis – for all the pledges over increasing the number of “bobbies on the beat”, the only thing that seems to be increasing is the paperwork. Despite these failures, the Government retains its monopoly of policy – there is no way for the public to come along and point out that a particular law was misguided, or to suggest a measure that could usefully be adopted.

The paradox, therefore, is that Parliament has too much power over too little. Ministers micro-manage services such as health, with counter-productive consequences, but disclaim responsibility for other vital areas of policy. At the same time, the past decade has seen a string of ill-conceived constitutional measures, designed to satisfy particular interest groups or gain short-term popularity,

¹ Statistics from Germany show that the EU is responsible for 84% of legislation in that country.

with no thought of the long-term consequences. The “reform” of the House of Lords; devolution to Scotland and Wales; transforming the position and powers of the Lord Chancellor – all were hasty measures, and all are now showing their flaws.

It has long been a conservative axiom that change should never be imposed for change’s sake; that constitutional reform should be approached hesitantly and carefully, to solve specific problems. Labour’s reforms have failed to meet these requirements – but those outlined in this paper would. The guiding principle is to move power over decisions as close as possible to the people they affect.

Remember the words of Sir Humphrey Appleby, who boasts in *Yes, Prime Minister* that “since 1832, we have been gradually excluding the ordinary voter from government”. When challenged on this, he responds: “If the right people don’t have power, do you know what happens? The wrong people get it. Politicians! Councillors! Ordinary voters!” Localism means transferring power away from the “right people” – and in the process revitalising politics, Parliament, and British democracy.

3. Open Politics

Thanks to Sir Humphrey and his friends, the ordinary voter has indeed been excluded from an increasingly unresponsive form of government. The result has been lower turnout, increased apathy, and general cynicism about the political process. Polls show that most people agree that politicians are self-interested, know nothing about the real world, make promises they cannot keep, are much of a muchness, don’t reflect their views, and will not be able to improve the condition of the country. Similarly, the independent Power Inquiry, for example, concluded that “the current way of doing politics is killing politics.”

Few politicians need to be responsive to the views and wishes of the electorate. Even assuming that their seats are not one-party fiefdoms, most Members of Parliament

represent constituencies that are far from marginal. Unless an MP has the misfortune of being from a marginal seat, or having the boundaries of his constituency redrawn, there is little realistic prospect of not being returned as an MP (provided he retains the confidence of a small number of local party members). Members of the European Parliament are elected from party list systems that exclude ordinary voters. Such systems breed unresponsiveness. Most MPs are more likely to take into account the views of their party members (or party Whips) than the views of those who vote to represent them.

How might the process of politics be changed to make it more responsive?

Party funding

The first issue to consider is the way parties organise and finance themselves. Traditionally, parties have been funded by the rich, the unions or the state, with their supporters treated as little more than footsoldiers. Now, in an effort to lessen the parties’ dependence on single donors, the danger is that state funding will be increased, according to Sir Hayden Phillips’s prescription, further alienating the people from their politicians, increasing elected representatives’ dependence on the state, ossifying the current party structures and – as the experience of funding structures on the Continent shows – providing the opportunity for more, rather than less, corruption.

A far more attractive alternative is where parties are funded by multiple, smaller donations. Evidence from the US shows that with the internet, the role of small one-off political donations is becoming increasingly important. Web power has raised large sums of money to fund the campaigns of candidates once considered too outside the mainstream to attract serious backing. Instead of looking to the taxpayer to fund politics, political parties need to innovate and find ways to encourage large numbers of small donations.

The impact that the internet is having on businesses is well understood; barriers to

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entry have fallen, new entrants have found it easier to compete with established operators, and distribution costs have come down. As a consequence many existing businesses have had to either adapt to new competition or lose market share – or even both. What is less well understood is the effect of the same forces on politics.

In the age of YouTube, established political parties may find that they too, face competition from new, nimble-footed competitors. Conventionally politicians needed costly and hierarchical party machines to get their messages across. They needed to brand themselves and their candidates for a mass market. For most of the past century, such barriers to entry ensured that politics remained the preserve of a few big players.

This may well be about to change. The costs of communicating via the internet have tumbled, and almost anyone can today make their equivalent of a party political broadcast. Voters themselves are no longer the passive viewers of electronic news and entertainment, but consumers able to seek out the views and the information that they want. The idea of a standardised mass market in votes may turn out to be as dated in politics as it is in many other areas. Far from offering voters template choices at the ballot box, political parties may soon find that it instead pays to give the voter a wider choice under a less centrally controlled party brand. This could have profound consequences not only in terms of how parties raise funds, but how they come to choose who represents them in elections.

Open Primaries

In a similar vein, the use of proper open primaries to select candidates for public office will help to re-engage more people in the political process and will give the electorate real choice.

Direct Democracy was the first to propose “open primaries” two years ago. And the idea has now taken root within the

Conservative party. But their use should be extended so that candidate selection is opened up to the public as a whole, not just party members. Candidates would then be both more representative of, and popular within, their communities. Ordinary voters would have a real say as to who might represent them, rather than merely choosing between different candidates served up by the party hierarchies.

More generally, any measure which strengthens democracy within a political party, and gives a voice to its membership, should be encouraged.

Taking the initiative

But what of those who are not active in politics – who do not even vote? No matter who they are, there will be issues they are passionate about, and wish to express an opinion upon – hence the need to break the Government’s monopoly on legislation, and let the people have their say.

The country where this idea has been most successful – where direct democracy is a living, breathing, constantly employed part of the constitution – is Switzerland. There, towns, cantons and communities poll the people on all manner of things, from the size and composition of budgets to immigration decisions. It is up to each locality to decide on its own recipe for democracy – an idea we could do well to adopt in Britain.

The Swiss have three types of national poll. There are citizens’ initiatives, ideas put forward by a particular group to be voted on by the population as a whole.² There are blocking referenda, attempts to veto recently passed legislation if a particular group is unhappy with it. And there are referenda to confirm changes to the constitution: the theory being that politicians elected under

² See Prof M Qvortrup, *Supply Side Politics: how Citizens’ Initiatives could revitalise British politics*, Centre for Policy Studies, 2007. This paper demonstrated that the introduction of the Citizens’ Initiative in the UK could in part redress the malaise currently affecting British politics.

one set of rules should not change those rules without a further and specific mandate.

It is worth pointing out that these are not crude plebiscites, of the kind where a government gets a rubber stamp for decisions it has already made. These are checks and balances of the most basic, effective kind, and all three could – with some adaptation – be used to strengthen democracy in Britain.

The objections to this form of direct democracy run as follows: that might work in Switzerland, but the UK is a bigger country, with different traditions. This system would never take on here. It is too expensive. It would replace Parliamentary deliberation with the rule of the mob and ill-considered, knee-jerk legislation that imposes the crude rule of the majority. Some have argued that it would lead to the reintroduction of the death penalty, or slashing the subsidy for Radio 3 or turning the Royal Opera House into a bingo hall.

These arguments have been demolished.³ For example, the quality of legislation has been found by independent studies to be markedly superior in bills put forward by citizens than it is in bills proposed by the legislature – for one thing, there is no “earmarking”, for another, the language has to be easily comprehensible, for a third, the laws (in the US and Switzerland, at least) have been carefully drafted, emerging from long periods of campaigning, discussion and fine-tuning. Indeed, not only are the bills more carefully composed, but the voters are more assiduous in finding out what they are voting on – when it came to the Danish referendum on the Maastricht Treaty, surveys found that members of the public were in fact better informed of the treaty’s precise details than were their elected representatives.

Then there is the issue of populist capture – imposing the “ignorance and caprice and irresponsibility” of the masses above “the

learning and judgement of the legislature”, as *The Los Angeles Times* put it in 1912. Aside from the fact that this betrays a profound distrust in ordinary people, it is false. The law, essential human rights, the liberty of minorities to live as they choose – these are not things that can or should be set aside by a tyrannous majority, and nor have they been. In the case of the death penalty, for example, only three of the 38 American states which employ it do so as a consequence of a popular ballot initiative. And the evidence suggests that states which enjoy a citizens’ initiative are *less* likely to adopt the death penalty than states that do not allow voters to enact legislation through initiatives.

Then there is the issue of legislative paralysis, that the public would be constantly second-guessing Parliament, and nothing would be solved. Again, the example of Switzerland suggests the opposite. Of the laws passed by the legislature, 95% sail through unchallenged. But knowing that their laws can be sent back with the political equivalent of “C minus – see me” scrawled over them concentrates politicians’ minds wonderfully, and improves the quality of those laws that do pass. The recent poll on Radio 4’s *Today* asking listeners which particular laws they would like to repeal demonstrates that Parliament does not get it right every time, especially when one party has an unassailable majority and can simply shove through hastily written and ill-conceived laws.

The more you study citizens’ initiatives, the more the advantages stack up. They can be folded into existing election days, lessening the cost (unlike the Swiss, the British would probably balk at voting in six elections and 30 referenda per year). When that is done, turnout increases in the area. Places that have embraced direct democracy have more political involvement, cheaper public services, less tax avoidance (if the budget comes under democratic scrutiny), even – and this is scarcely believable – stronger economic growth.

³ See Prof M Qvortrup, *op. cit.*, for more details.

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So how would this system operate in Britain? Obviously, there would have to be some modifications – but it is crucial that we choose a form of direct democracy that both empowers people, and allows them to see the fruits of that empowerment. In many countries with theoretical provision for citizens to participate in democracy, the practice has withered away – either because the threshold is too high (for example, too many signatures are needed to put forward an initiative, or the time to gather them is too short) or because what the people put forward can be brushed aside by Parliament as non-binding (as in New Zealand).

We would not make citizens' initiatives subject to a mass popular vote, which was then binding on Parliament – the supremacy of the Queen-in-Parliament is, after all, the foundation of our political system. Instead, petitions which gathered sufficient support – say five per cent of the electorate – would have to be included in the Queen's Speech as People's Bills, read after those proposed by the Government. These would have to be given sufficient Parliamentary time – no procedural chicanery, please – and would be subject to a free vote from MPs. MPs would of course be free to oppose the measures, but would then have to explain to their electors why they voted as they did. This would also have the pleasing side-effect of squeezing the Parliamentary time available for the Government's own bills, forcing it to be slightly more selective about what it puts forward, rather than burying legislators in a tidal wave of unnecessary legislation, as at present.

The blocking referendum and the constitutional referendum would, however, both be perfectly suited to the British system. The first would not dictate to Parliament, merely ask it to think again – perhaps to consider difficulties in legislation which had only belatedly become apparent. As for the constitutional referendum, what could be more just? It is damaging to democracy if legislators can rewrite the rules to suit their own convenience – this way, anything affecting their terms of trade,

especially in terms of transfers of power upwards, downwards or sideways, would have to win popular approval.

A right of popular initiative, coupled with a system of open primaries, would have a profound effect on our political system. Not only would the people have a far more direct say as to who should represent them, but in allowing the people to help shape the political agenda, they would determine what their representatives deliberated.

Central control has, over the past decade, been shown to have failed comprehensively. Ministers – for the best of reasons – have tried to improve government performance in every area of policy, no matter how obscure. They have failed.

With such a system of open politics, there would of course be no requirement for people to participate – if the British public are indeed too lazy and apathetic to rule themselves, the results would be obvious. But before arguing that Britain is not ready for such a drastic change, consider the words of Nobel Prize-winner Amartya Sen. "A country," he said, "does not have to be judged to be fit for democracy. Rather, it has to become fit through democracy." It will be a great experiment, but all the evidence suggests that it will be successful one.

4. Constitutional Reform

Britain's constitution places too much power into the hands of remote and unaccountable institutions. It needs rethinking.

The problem with Parliament, and its ministers, is that they have too much power over too little. This is understandable – politicians hate taking the blame when things go wrong, so are only too eager to place themselves at arm's length; at the same time, the natural tendency of all governments and institutions is towards the agglomeration of power. So what needs to be fixed about the way Westminster works?

The most obvious point is that central control has, over the past decade, been shown to have failed comprehensively. Ministers – for the best of reasons – have tried to improve government performance in every area of policy, no matter how obscure. They have brought in dozens of plans, strategies and public service agreements, each carrying a quiverful of targets, dealing not just with results but with how people do their jobs. This distorts people's priorities, as they focus on meeting the targets rather than prioritising the interests of the citizens they should be serving. These targets are, inevitably, accompanied by structures to enforce compliance – hence a massive growth in inspectors and inspections, attracting both more resources and the petrified attention of those who should be focusing on doing their actual job.

Reining in the Prime Minister

The problem goes to the very top of government. Decisions are increasingly made not by Parliament, but by the Prime Minister; and not by collective Cabinet discussion, but by a group of largely unelected advisers lounging on the sofas of Downing Street. The party system gives a Prime Minister with majorities as large as Tony Blair's effective control of Parliament; consequently, the institution has withered under his premiership (as reflected by his sparse attendance record in the House of Commons).

Two years ago, Direct Democracy suggested that the Prime Minister should be stripped of the powers he exercises in the name of the monarch under Crown Prerogative (this is

now Conservative Party policy). These powers are terrifyingly broad. They include not just the power to appoint ambassadors and heads of commissions and agencies, but the power to take us to war without Parliament's approval. These powers of patronage should be transferred to Parliament, which would make or confirm appointments through open hearings. The system would be similar to that which operates in the US where senior judges, heads of quangoes, commissioners appointed to investigate government failures and ambassadors must explain their qualifications, priorities and ambitions to the legislature, and through it, to the electorate.

The system would be similar to that which operates in the US where senior judges, heads of quangoes, commissioners appointed to investigate government failures and ambassadors must explain their qualifications, priorities and ambitions to the legislature, and through it, to the electorate.

This would also neatly solve some of the problems with the honours system, so recently exposed. Rather than honours being granted in return for financial favours, knighthoods and the like could be decided on by Parliament, again in the full view of public scrutiny.

Another way of reasserting the primacy of Parliament within government – and therefore both strengthening its legitimacy *vis-à-vis* the electorate, and narrowing the divide between the political classes and the voters – would be to give it a power of approval over treaties (as opposed to having them agreed, as

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they are at present, by ministers via Crown Prerogative). It would no doubt strengthen our negotiators' hand in international meetings – and stiffen their resolve – if they knew they would be held accountable for what was agreed. If it proves impractical to insist on this for every single accord, it should at the very least apply where a foreign treaty imposes domestic obligations on Britain. (For more on this, see the forthcoming Direct Democracy paper on foreign policy).

Bringing about better laws

One of the most urgent challenges is to improve the quality of legislation. The volume of the Labour administration's legislative incontinence has been matched only by the poor quality of the laws produced – which often require considerable further legislation to fix. Ministers prefer shiny new measures to making proper use of existing ones – after 9/11, for example, they awarded themselves huge new powers rather than applying existing laws on incitement, conspiracy and nationality rights. In nine years, Labour brought in five Acts on immigration, seven on terrorism, 10 on education, 11 on health and social care and 23 on criminal justice. It has also created more than 3,000 new crimes and passed more than 32,000 statutory instruments. As for the shoddiness of much of this legislation, look at the Identity Cards Act, which accidentally repealed the law making it illegal to have a false passport; or the Safeguarding Vulnerable Groups Act, which extended criminal-record checks to a third of the working population and was so badly drafted that 250 amendments needed to be made.

As well as the Swiss “blocking referendum”, outlined above, there is another way to revisit legislation without any popular agitation – sunset clauses. Various governments around the world have toyed with time-limited legislation: that is, laws that automatically lapse after a certain period unless explicitly reaffirmed. Britain, too, has occasionally made use of the device, the Prevention of Terrorism Act, annually

renewed throughout the 1970s and 1980s, being the supreme example. But the practice has never become widespread.

This system could be applied to the creation and maintenance of statutory bodies. The heads of the Health and Safety Executive, the Equal Opportunities Commission and every other quango in the land should be required to justify their continued existence before the relevant parliamentary committee each year, and apply for funding on an annual basis.

Reforming the Lords

Of all the areas of the constitution vandalised by Labour, the House of Lords is the most obvious. Such is the disillusionment with the way it has been packed with party donors that the House of Commons took the unprecedented step recently of voting for a fully elected chamber (when Direct Democracy made such a proposal two years ago, it was considered radical). The problem now is what shape that new Lords should take: on the one hand, appointment is undemocratic; on the other, nobody wants to create a new tranche of politicians at public expense.

The current chamber does an excellent job of revising legislation and challenging the government. Yet, whatever the individual qualities of its members, it embodies much that is wrong and undemocratic about the administration of Britain. It is made up of people who can pass laws without having to justify themselves to those who obey them. The appointments system fills it with ex-politicians, or people who have worked their way up through the CBI or TUC, BMA or NFU (rather than actual practising businessmen, factory workers, doctors or farmers).

An ideal Upper House would reflect the temper of the country as a whole without establishing a new tier of politicians. So why not rely on elections that have already taken place, and create a Chamber of the Regions? This would be filled with existing county and borough councillors in proportion to their parties' representation in each county or city. This would correct the metropolitan bias of

the Upper House; give a valuable fillip to the prestige of local government; and allow life peerages (or, for that matter, hereditary peerages) to become wholly a mark of service, devoid of political significance.

Curbing the quangoes

This reform of the House of Lords would also have a pleasant side-effect: it would lower the status of the quangocrats, who would no longer receive a place in the Upper Chamber merely in exchange for chairing councils, boards and agencies.

One of the reasons why voters no longer see any connection between where they put their cross and anything that affects their lives is that the make-up of their local council, or of the House of Commons, often has less impact on them than that of the Highways Authority, the Child Support Agency, the Health and Safety Executive and a thousand other quangoes. This is “post-representative democracy”, in which unprecedented powers are now wielded by bodies which are part of the state machine, but outside the democratic process. The Qualifications and Standards Authority sets exams; the National Institute for Clinical Excellence (NICE) determines what drugs doctors might give their patients. Every time there is a story in the newspapers about a particular drug being available, it is NICE which has made the decision – a blanket decision, for the entire country, which takes no account of local needs and capabilities.

The proliferation of quangoes is self-evidently damaging to democracy – which is one reason why they should be under far greater Parliamentary control. But it is bad for civic society, and for social responsibility. The creation of a ruling caste of state administrators has come at the expense of traditional authority figures. The position of clergyman or headmaster no longer has the same degree of respect, largely because their places have been filled by assessors, regulators and mediators. Then there is the most glaring problem of all with the quangoes – if someone is not directly

accountable, he has little incentive to do his job especially well. Given that there are now more than 2,500 quangoes, employing an average of 800 staff each, the extent to which they are stifling good government becomes readily apparent.

While opposition parties have promised to reduce the number of quangoes, their number has steadily increased over the years, and their powers have grown. Instead of merely being marked for abolition, quangoes need to be made properly accountable to Parliament.

While many opposition parties have promised to reduce the number of quangoes, their number has steadily increased over the years, and their powers have grown. Instead of merely being marked for abolition, quangoes need to be made properly accountable to Parliament.

The heads of major quangoes need to have their appointments ratified by House of Commons Select Committee hearings. Asking the Defence Select Committee to approve or veto the appointments to the Defence Procurement Agency or the Health Select Committee to ratify the head of the NICE would strengthen the power of Parliament against the permanent bureaucracy.

In a similar way, it is time to consider annualised budgets for such quangoes. If Parliament decided how much public money to allocate to each quango, rather than a nameless Treasury civil servant, quangoes would be much more inclined to do as Parliament wished, rather than what career bureaucracy desired.

Humbling the judiciary

The readiness of judges to take political decisions – that is, to rule on the basis of what they think the law ought to say rather than what it actually says – is not peculiar to Britain. In almost every democracy, the judiciary has sought to expand its powers beyond what the legislature has laid down.

The problem with judicial activism is that there is, by definition, no legislative prophylactic against it. MPs can insert whatever safeguards they want but, if a court dislikes a statute, it will simply ignore them, and appeal to a higher power – a purpose for which European law, which now takes precedence over British, has proved ideal.

Consider the Fayed nationality case of 1996. Mr Fayed had been refused British citizenship, and wanted to know why. He took his case to court, where Lord Woolf found in his favour. The judge then tacked on an extraordinary observation to his ruling: “this judgment,” he said, “does not imply any criticism of the Home Secretary or his department. *Until this court decided otherwise* [our emphasis], it was perfectly reasonable to take a different view.” Yet the 1981 Nationality Act, which was consciously designed to prevent such rulings, said: “The Home Secretary’s decision shall not be subject to review in or challenge by any court whatever.” Lord Woolf (who has argued extra-judicially that judges have not only a right but a duty to strike down bad statutes) simply ignored this provision.

Judges, in short, have come to see their own consciences as a higher authority than any statute – and it is striking that when they have taken arms against Parliament, they have almost always done so from the same direction. They attacked the idea that MPs should impose minimum sentences for certain crimes; but had no objection to maximum ones. They howled when Jack Straw ruled that some murderers ought never to be released; but were strangely silent when, under the terms of the Belfast Agreement, a number of convicted murderers *were* released, with equal disregard

for judicial process. They repeatedly block the repatriation of illegal immigrants; but never order the deportation of someone allowed to remain in Britain.

What, then, can be done? Change is possible at a local level, by giving control over sentencing to an elected sheriff (this will be discussed in a later paper). Parliament should also oversee senior judicial appointments in a rigorous, open fashion, as proposed above. Finally, the authority of Parliament should be stated explicitly in a British Bill of Rights, setting out areas where MPs’ decisions were supreme – and reaffirming that British laws, passed by British lawmakers, should take precedence over EU ones, as they do not at the moment.

The Conservatives have gone some way towards this position, by advocating a Bill of Rights to replace the European Convention on Human Rights which has, unfortunately, seen the precious ideal of “human rights” repeatedly abused (the ECHR having been used by prisoners demanding Freeview on their televisions, or by pupils refusing to be punished). But it is Conservative policy still to accept the primacy of European law, allowing ever further encroachment on British – and Parliamentary – jurisdiction. The European Court of Justice has a hunger for power that surpasses even the most activist British judge, and has repeatedly pushed its authority beyond what is written in the treaties.

Bringing power back from Brussels

The European Union is perhaps the greatest quango of all. And if it is accepted that decisions should be taken as closely as possible to the people they affect, that place will seldom be Brussels.

The problem is not that international agreements and co-operation are bad things in and of themselves. They are manifestly not. Anyone can see the benefits of such co-operation just by walking into their nearest Tesco and browsing through the mind-boggling array of imported vegetables, or by taking the Eurostar to Paris and seamlessly connecting their mobile phone.

But if you believe in personal liberty, democratic accountability and clean government, it is difficult to remain part of what the EU is becoming. It is so poorly run that the European Commission's accounts have been rejected by auditors for more than a decade; its laws and regulations hamstring our people and politicians and prevent them from doing what is best for the country and themselves. During the 2005 election, for example, the Commission announced that the Conservative proposal to set an upper limit to the number of immigrants entering Britain was incompatible with the EU's "Area of Freedom, Security and Justice". The Common Agricultural Policy has ruined farming and kept Africa in impoverishment; the Common Fisheries Policy has decimated fish stocks. All of this has served to undermine confidence in the electoral process. Restoring faith in the integrity of our democracy means, in the first instance, giving elected representatives the legal power to stand by their manifesto pledges.

If Britain is to be a democratic country, it cannot accept the supremacy of regulations passed by unaccountable functionaries. Just as that precept should apply at home, so it should be extended to Brussels. As suggested above, policies stemming from foreign treaty obligations should come into force only following their specific implementation by Parliament; and Sections Two and Three of the European Communities Act should be repealed to the same end. This would ensure that EU laws came into effect in Britain only following a vote Parliament.

Far from localism, the EU is going in the opposite direction, constantly centralising powers, and heaping ever higher the accumulated pile of Brussels legislation. It is this, ultimately, that militates against our participation. Repatriation of power from Brussels is not an end in itself. Rather, it is a means to an end – the end being a freer and more accountable Britain.

Rethinking Unionism

The mishmash of constitutional measures established by the Labour Government is beginning to fall apart under the weight of their own contradictions. Nowhere is this more apparent than in the case of devolution. Labour hived off powers to the Scottish Parliament and Welsh Assembly in an effort to make the governance of those countries more representative after years in which Labour-voting Scots were still ruled by Tories in Westminster.

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The upshot, however, has been the worst of both worlds: the failings of the Labour/Lib Dem coalition in Holyrood have seen the secessionist Scottish Nationalists become the largest party while the English are increasingly resentful as they see their money being funnelled north to support a bloated Scottish state; and as Scottish MPs vote *en bloc* to push through measures – such as bans on hunting or smoking in public places, or the creation of city academies and foundation hospitals – which do not affect their own constituents.

Localism would wipe away these resentments and tensions at a stroke. If those powers which have been granted to devolved

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assemblies in Edinburgh and Cardiff were returned to the local level in England, then Westminster MPs would be on a level playing field – whether they had been elected in Plymouth or Pontypridd, they would be voting on, and have power over, the same issues. Indeed, this would create a situation where the Scots and Welsh would be the ones looking enviously over the border, as they would have less control of their own affairs than the citizens of England. It would not be long, perhaps, before localist campaigners won the battle to bring similar power to the citizen across the UK. If, however, the Scots decided that their appointed procurator fiscals did a better job than the elected sheriffs with powers over sentencing advocated for England, they would be perfectly at liberty to keep them: the essence of localism, after all, is that each area should decide for itself which system suits it best.

Such a transfer of power would also neutralise many of the arguments in favour of Scottish independence. Separatism is often couched in terms of increasing Scotland's freedom of manoeuvre, of allowing it more flexibility in terms of arranging its economy and society. How can London know what is best for West Dunbartonshire? It cannot – no more than it can know best for Cornwall, or Kent, or Hartlepool. With such increased control over their own affairs, Scots would have less to gain by leaving the Union.

Cutting back the role of the central state, and encouraging each locality to take control of its own affairs – and giving individuals the right, and the resources, to take control of their own affairs in areas such as health and education – would also resolve the vexed question of subsidy. At the moment, the English, especially those in the South-East, complain that the Barnett Formula redirects their tax pounds to Scotland, Wales and Northern Ireland in unfair quantities. Scots counter that money from North Sea oil which should belong to them is guzzled by the Treasury in London. Making local

authorities fiscally as well as politically independent – under the system outlined later in this paper – would make this central funding more transparent, and end the crude system whereby money is allocated by country, rather than by which particular region, in whichever country, had greatest need of it.

Northern Ireland.

Northern Ireland is possibly the least democratic area of the UK. For understandable reasons, the province is run under a power-sharing system which ensures that all parties have a stake in government. Yet while this helps defuse tensions between republicans and Unionists, it is highly damaging to democracy. Under the d'Hondt formula for proportional representation, each of the major parties is guaranteed a stake in government in the form of ministerial positions should it achieve a certain proportion of the vote. Should that government disappoint, there is no mechanism for removing it from power: not only is there no opposition to keep the governing parties honest, but there is no incentive for them to improve their performance.

This leads to a system where the politicians become ever more distant from the parties and where civil servants and quangocrats have no reason to take public opinion into account when making their decisions. Coupled with the massive government subsidy which props the Province's economy up, this has marginalised individuals and individual initiative.

Localism would allow people to express their views and take control of their lives as individuals, rather than members of a particular religious or economic group. Elsewhere in the world, cantonised systems of government have enabled divided communities to live side by side under subtly differing systems – and there is nowhere in the UK where this would be more appropriate than in Northern Ireland.

5. Liberate local government

There is no point in advocating any kind of new constitutional arrangements, however, if the money stays in the hands of the centre. The past few decades, under Tory governments as well as Labour, have seen local government stripped of much of its power, with the remainder tied to targets and policies dictated in Whitehall. Advocating returning these resources to the councils is not practical – that would simply return the situation to the bad old days of the 1970s. Instead, councils should become genuinely self-financing, but in a way that allows tax competition between them, introducing, for the first time in this country, genuine pressure on councils to outperform each other in terms of quality of services and competitiveness of tax rates.

Most of the reforms which have been successful in the US recently, from welfare reform to “three strikes and you’re out”, began life at state level, while the single most popular reform of the Thatcher Government, the sale of council houses, was piloted by Tory councillors.

Fiscal autonomy should be accompanied by careful consideration of which is the appropriate level for each power to be exercised – and an acceptance that central government will be blamed when things go wrong. It will be a courageous politician who can stand up in the House of Commons and say: “This is not my problem to solve: it is the local councillors who are responsible.”

Yet until that happens, the quality of local government will continue to deteriorate: what politician of vision and talent will want to work in a post where his hands are tied by the Treasury? The principle should be that decisions should be taken as closely as possible to those they effect, and by individuals who are demonstrably accountable – such as directly elected mayors, one of the few innovations by this Government that is warmly welcome.

From Whitehall to the town hall

So, which powers should be devolved to councils? To start with, almost all of the functions previously exercised by the Office of the Deputy Prime Minister, or by the Scottish Parliament, could and should be devolved. No community in the country agrees with the house-building targets imposed from the centre, or with the way in which Whitehall can overturn local planning decisions – yet they are powerless to act. The most grotesque form of this comes from the Pathfinder scheme of bulldozing perfectly adequate housing in the North of England, to feed the boom in the South.

Yet this is just one of many quality-of-life issues over which voters and their elected officials have little to no control: the siting of mobile phone masts, the building of incinerators, the frequency of waste collection are all local issues controlled from the centre. People feel outraged, not only because of the impact on their communities, but because of their sense of powerlessness.

Or consider the question of social security. At the moment, county councils are obliged to implement welfare policies in which they have had no say: they deliver services, but have no discretion over who is entitled to them. If they were allowed to distinguish between deserving and undeserving cases, the impact would soon be felt in policy terms. The sheer size and universality of the welfare system leads to unintended consequences, high administrative costs and insensitivity to particular circumstances. Localising this would encourage flexibility, and the

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subsequent pluralism would allow other councils – and, indeed, Westminster – to observe and copy what worked.

Indeed, pluralism – the ability to trial and mimic – is perhaps the single greatest advantage of devolution. Many of the reforms which have been successful in the US recently, from welfare reform to “three strikes and you’re out”, began life at state level, while the single most popular reform of the Thatcher Government, the sale of council houses, was piloted by Tory councillors.

Taming the Treasury

The arguments for making councils self-financing are equally compelling. Town halls in Britain are uniquely dependent on subsidies from central government: of all the countries in Europe, only Ireland has a more centralised form of local government finance. The vast majority – approximately 90% – of revenue collected in Britain goes to the Chancellor in Whitehall; 75% of the money spent locally comes from the Treasury. There is virtually no link between taxation, representation and expenditure at local level.

This has several consequences. First, it rewards inefficiency: councils that use their resources effectively do not get rewarded with more money, while those that spend more, get more (rewarding profligate but inefficient left-wing councils, whose voters become ever more dependent on grants). It erodes accountability: it is far from clear to puzzled voters who is responsible for what, and who pays for it. Local politicians have little freedom of action to fix things – with the result that more than 90% of people are dissatisfied with the services provided by their local authority.

Making councils self-financing – allowing for a national top-up for deprived areas – would make them more efficient, more accountable and more attractive to qualified candidates. It would also, incidentally, have an impact on voters’ attitudes. Voters would take a very

different view of, for example, a neighbour whom they knew to be claiming disability allowance while working on the side, if they could see a direct connection between his behaviour and their tax bill. But new taxes are never popular, and new local taxes – as the Poll Tax showed – are politically explosive. If social security is the “third rail” of American politics, local government finance reform is the British equivalent – hence, perhaps, the timidity of the Lyons Review of the issue, and Gordon Brown’s kicking of its limited proposals into the long grass.

A local sales tax?

The problem with most mooted forms of local government tax is that each one would damage a particular group. Council tax penalises disproportionately those who own houses, but have no income, particularly pensioners. A local income tax would have the opposite flaw, penalising those in work while leaving a large minority wholly exempt; the poll tax weighed especially heavily on the working poor. Under any of these systems, a chunk of the electorate would be encouraged to vote for higher spending, knowing that they would be unaffected by the consequential tax rises.

Only one form of tax would avoid all these problems, being neither discriminatory, opaque nor conducive of profligacy: a Local Sales Tax. The Treasury happens to raise almost the same amount through VAT as it hands over to local councils in grants. So why not replace VAT with a local tax, set at a local level? This would not be an “extra” tax; rather, it would replace an existing and highly unpopular tax.

Unlike VAT, which is complicated and expensive to administer, the LST would be charged just once, at the point of retail. It would be set at the level of a county or metropolitan authority, to avoid the distortions that arise from having concentrations of shops in small areas. Local councils would be free to vary the rate according to their needs.

A similar scheme in the US has given rise to something almost unknown in Britain – tax competition, and downward pressure on rates. State governments know that over-taxed shoppers can simply cross the state line, as can whole businesses, sending revenues plunging and leading to electoral disaster. Nor does the greater size of American states make a convincing counter to this argument: Kent, for example, would be the 33rd most populous state in the Union.

This system would have several advantages. First, it would be fair: it would affect everyone, because we all buy things. It would match disposable income closely, since richer people tend to spend more, but there would be few freeloaders voting for higher spending. The electorate, in other words, would match the tax base. It would also be easier than ever for voters to see who was responsible for charging them what, and to vote accordingly, without councillors sheltering behind talk of Standard Spending Assessments and ring-fenced grants. And, best of all, it would encourage competing tax jurisdictions.

6. Conclusion

This paper has sought to argue that British politics, and the British constitution, are in a mess – but that the solution is within grasp. In essence, it boils down to trusting the people: trusting them to vote wisely, trusting them to manage their own affairs within newly invigorated councils, trusting them to be the rulers, not the ruled.

Even our old friend Sir Humphrey recognised the power of this idea: his riposte to plans for change was a warning that, “Once you create genuinely democratic local communities, it won’t stop there!”

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