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Could there be a "Confederal" UK?

As Brexit grinds towards its next stage, the UK is once again stretched on the constitutional rack: a Northern Ireland settlement destabilised by the realities of a land border with the EU; louder demands from the SNP for an independence referendum; and even increased interest in independence in Wales. The government in London is worried, but has no clear plan for the UK's territorial constitution post-Brexit, beyond an increasing emphasis on the benefits of the union, and some fringe talk of federalism. The Labour and Liberal Democrat parties show a more positive interest in that idea, but detailed, concrete proposals are thin on the ground. This paper sets out the case for a "confederal" territorial constitution for the UK, what its institutions might look like, and what steps could be taken now to move towards it.

Today, the United Kingdom is a combination of very wide devolution (in Scotland, Wales, Northern Ireland) and deep centralisation (in England). The devolved nations have legislatures with great scope, and their own governments running most public services, with substantial fiscal freedom. England has a small number of mayors with limited powers. So it is perhaps not surprising the territorial aspects of the UK's constitution are incoherent.

Why support federalism for the UK: a bad reason, and some good ones

From the perspective of nations like Wales and Scotland, with divided views on the question of separation or union, the idea of federalism, like devolution, might be described a "strategic compromise" between independence and incorporation: it is a mixture of self-rule and shared rule. Rather than one section of the population securing everything they want, each compromises to some degree. There is little sign of that in the winner take all style of present day Scottish constitutional debate, but more in Wales, and in Northern Ireland constitutional compromise is built into the institutions of devolution.

A commitment to federalism for the whole UK cannot simply be a "more devolution" sop to separatist tendencies. That would not work in Scotland, nor be acceptable to the rest of the UK. Instead, it should be based on a deeper understanding of the nature and benefits of decentralised government for the whole country and be built on a commitment to decentralising political power across the whole UK, not simply the devolved nations. That is a necessary condition for reducing the UK's wide spatial inequalities, and it provides opportunities to devise and implement policies that reflect public opinion in different parts of the UK. For those who support progressive politics, it provides the opportunity to promote social justice in some parts of the country, even when there is not a progressive UK government. But such federalism must recognise the deeply asymmetric nature of the UK, given the size of England, and the implications of the differences between the institutions in the devolved nations and those in England. For Scotland and Wales, the key insight is that the shortcomings of devolution lie not in inadequate powers but in dysfunctional relationships. Changes to the territorial constitution to create a confederal system also need to be located in wider constitutional reforms, and can be implemented in stages.

Despite devolution to Scotland, Wales and Northern Ireland over the last two decades, the UK remains perhaps the most centralised large country in the world. The government of England is grossly overcentralised in London (increasingly so under the present

administration). Radical decentralisation is needed: first, to allow people in different parts of the country policies which more closely meet their preferences; and secondly, to help manage the regional economic development policies needed to address the UK's gross economic inequalities. It is perhaps progressive politicians who have traditionally been most suspicious of decentralised government, preferring UK-wide solutions which maximise the territory across which social solidarity is exercised. But decentralisation can be designed to secure continued social solidarity – such as provision of guaranteed benefits or levels of public services – while still acknowledging differing identities and preferences, providing the opportunity not simply for local leadership and innovation, and the opportunity for left of centre parties to promote social justice in at least some parts of the country.

The UK is one of the most geographically unequal advanced countries in the world, with levels of economic activity and welfare markedly different between the rich south east and poorest regions. The differences in levels of economic activity are more striking even than between states of the US, but the effects on the welfare of the population are mitigated by large fiscal transfers supporting common standards of pensions, benefits and public services. In order to address these regional inequalities, political decentralisation is essential, but not enough: it will have to be accompanied by effective programs of regional economic development, which the UK has not had since the 1960s. To some degree, Brexit may enable this: but no concrete proposals for a "shared prosperity fund" or the like have been produced by the present government.

Decentralisation in England has had, at best, a chequered history. Administrative decentralisation of central government functions to the Standard Regions under the Conservatives in the 1980s was carried on by Labour (after the failure of the north-east referendum) with more powerful regional economic development bodies, but unwound by successive Conservative governments. Directly elected mayors, initially only for London, have been revived under Conservative administrations, and may offer the most promising building block for the future. The aim is to promote local agency and policy innovation, especially in the economic sphere, rather than recognise identity. By contrast, by any international standards the degree of devolution to Scotland, Wales and Northern Ireland is remarkably wide. In terms of both spending and taxation powers devolution (in Scotland especially) is comparable to highly decentralised federal states, such as Canada or Switzerland. It has however been more successful in acknowledging questions of national identity than as a laboratory for successful economic development or innovative public policy.

The different natures of English decentralisation and national devolution have important implications for how the UK should become more federal. The former is a planned reallocation of power inside an existing nation, matching local decisions to local democratic priorities; the latter a recognition that a "union" state is a coming together of previously separate national entities, with continuing institutional recognition of different identities, cultures and histories. Scotland, Wales Northern Ireland each entered into a union at different times and in different circumstances, and it has already been formally recognised that both Scotland and Northern Ireland could in different ways cease to be part of the United Kingdom. The same must apply to Wales. The structure of any federalism for the UK must therefore take account of sub-state entities which have important differences in nature and function and history. This paper uses the word "confederal" to emphasise that rather than a

simple, symmetrical, federal structure, the UK comprises units of different natures with differing relationships with the overall entity.

Dysfunctional relationships

Devolution in the UK has been under strain in recent years, mainly from the Scottish National Party. Their constant argument (whether in times of economic growth, recession, or epidemic) that even very wide devolved powers are inadequate can be attributed to their separatist ambitions. But there are deeper strains, such as those identified by the Labour administration in Wales, not about powers, but about relationships. These have come to a head in the aftermath of Brexit, and in the coronavirus crisis. To a substantial degree, this reflects the nationalism of the present UK Conservative government: like all nationalists it is instinctively unwilling to share power (whether with Europe or within the UK). But the underlying structural problem, whatever the UK government, is that devolved administrations serve only 15% of the UK population and are constant risk of being sidelined or forgotten by a UK government which is also the government of England. As a result, intergovernmental relations in the UK can easily become peripheral to the business of government, neglected in a way which they would never be in any fully federal state. Efforts, often in good faith, to remedy this have repeatedly been ineffective. One benefit of a more thoroughgoing programme of English decentralisation is that decentralised political bodies will become central, not peripheral, to the business of government. So a key part of the design of confederal institutions is the institutional relationships between them and the UK government and Parliament.

Similarly, although devolution has been one of the most significant constitutional developments of recent decades, it has been largely disconnected from other constitutional changes. But parliamentary reform, notably of the House of Lords, but possibly also in the Commons, is needed to ensure to the forms of accountability appropriate to widely decentralised power.

The institutions of a “confederal” state

There are three requirements for effective political decentralization, whether to the devolved nations or in England:

- First, democratic legitimacy, through direct election. Otherwise it is just a managerial arrangement.
- Second, a functioning administrative structure running things which matter to the public. One of the reasons for the success of devolution in Scotland and Wales was that the new democratic institutions were placed at top of very well developed administrative structures running important public services. The mayor of London has surprisingly few policy responsibilities: but they include things that matter much to Londoners – transport and policing.
- Third, there must be fiscal as well as democratic accountability: the public need to be given a choice – and politicians the responsibility – of deciding whether to spend more or less on public services. This has only in recent years been so in Scotland and Wales.

It is additionally critical that the institutional forms of decentralisation do not undermine the social solidarity which mitigates economic inequalities – notably common UK welfare and financial provision for public services.

London and the devolved nations

The devolution settlements for Scotland, Wales and Northern Ireland have gradually converged to be very similar. Wales is now very like Scotland and, although the legal structure of Northern Irish devolution is different, the effects are very similar. In essence, foreign affairs and defence, macroeconomic management and social security remain with the UK government while most public services, such as education, health, economic development and so on are devolved.

These arrangements broadly meet the tests for successful decentralisation: there is democratic and fiscal accountability, and substantial governmental machinery to implement locally decided priorities. Critically, the reserving macroeconomic issues such as currency guarantees the economic benefits of the UK domestic market (which, especially in the absence of the European single market, are critical for the economic welfare of people in each of the nations). Reserving the core of social security guarantees at least minimum UK standards of pensions and welfare throughout the UK, and it shows that in the event of asymmetric economic shocks the devolved nations are not dependent on their own resources to meet at least UK welfare standards while there is scope for more generous devolved provision. (In Northern Ireland social security is, formally speaking, devolved, but funding through the "parity principle" achieves the same outcome.) Moreover, funding the devolved administrations through the block and formula, although not a perfect measure of need, nevertheless ensures at least comparable levels of public services, despite different tax-raising capacity in each nation.

In terms of both spending and tax, these arrangements are comparable to decentralisation in many federal countries, and in some respects exceed them; for example, fiscal transfers are made to the devolved administrations without strings attached, something seen in no other federal country. The problems of devolution concern relationships rather than powers, but that is not to say that no further adjustments to powers could be made. Some additional powers will inevitably come to the devolved administrations from Brexit, and others are currently the subject of an intergovernmental squabble. One much more important candidate, however, given Brexit, is for the devolved administrations to be empowered to enter into relationships with the EU in respect of devolved matters – such as for example membership of the Erasmus scheme for students, or reciprocal provision of health services – if the UK government does not secure these.

London and England?

England notoriously centralised. Over the decades since the 1970s, local government has lost policy and fiscal autonomy, as central government in London has assumed accountability for services delivered and decisions once made locally. (This is not solely an English problem: local government in Scotland has lost virtually all autonomy, and power has been centralised

in Edinburgh.) The cause is not simply self-aggrandizement by national politicians. It reflects the pressure they feel to be accountable for everything that happens in the public sector, and a simplistic media opposition to a “postcode lottery”. The result is that power is concentrated to an unhealthy degree, leading to ineffective government – as the coronavirus crisis has shown. Centralising government in London may be an underlying contribution to the economic centralisation which makes the UK one of the most geographically unequal countries in Europe. Political decentralisation is a necessary, if not sufficient, condition for successful regional economic development to address this.

It has been tried. The English administrative regional framework promoted by Michael Heseltine is now little more than a statistical construct. The so-called standard regions lacked any emotional connection with their residents, and the infrastructure of regional development agencies was dismantled by subsequent Conservative administrations. The idea of directly elected local mayors, however, has proved more durable, and is the best basis on which to build a more radical programme of real devolution in England.

To become effective decentralisation, locally elected mayors need not only the democratic legitimacy they have, but substantially more executive responsibilities, decentralised from Whitehall, to run locally responsive services and policies. The long term aim must be that, as they are ready, all parts of England have the opportunity to run public services impacting very directly on the lives of their residents, such as economic development, education, and even health services. There is no reason why these executive responsibilities should not be comparable to those in the devolved nations but, as with them, undermining neither a single macroeconomic policy, nor an effective social union so the accidents of ill-health, unemployment or old age are not more pressing in one part of the country than another. This will in time free up central government to discharge its more strategic role. The responsibilities of figures such as the mayor of Manchester are a step in this direction, but must be radically widened.

Critically, there must also be tax decentralisation to provide fiscal flexibility and accountability: a revived fiscal federalism inside England, with resources distributed on the basis of need and taking account of different taxable capabilities, but offering tax flexibility. That can start with property taxation (council tax, nondomestic rates and stamp duty land tax) but not ruling out an extension in due course to personal taxation. This would be consistent with maintaining the Barnett formula for Scotland, Wales and Northern Ireland: the key thing to understand is that only the UK government can make the strategic choice on public expenditure between UK wide functions (welfare, defence et cetera) and devolved functions. Once that decision is made, the UK government also makes distribution decisions for devolved services, and Barnett offers a simple and pragmatic way, consistent with devolved autonomy, sharing out the UK-wide resources which support them.

Improving dysfunctional relations: Parliaments, nations and constitutional reform

The UK has yet to make a success of relations between its different governments: some of this is down to partisan politics and the pressures of nationalism, but the underlying structural problem is one of peripherality. The joint ministerial committees which brought together the UK and devolved governments fell into disuse not long after 1999, were revived in only 2007

(with the arrival of the SNP administration) and have more recently been a locus for Brexit disagreements. Joint working on the coronavirus crisis has been patchy. These should be supplemented (indeed largely replaced) by new intergovernmental fora which the mayor of London, and other English mayors, should attend by right. They might make a start by improving coordination on economic recovery after the coronavirus.

But the UK needs more than simply better day-to-day working at an executive level: it needs constitutional structures which recognise its confederal nature, and oversee the operation of its territorial constitution. A confederal UK should still have four legislatures: Parliament at Westminster, the Scottish Parliament, the Welsh Senedd, and the Northern Ireland Assembly. Westminster is both "federal" for the whole UK, and also the Parliament that makes England's domestic laws. This paper rejects the idea of a separate English Parliament, for three reasons. First, England still does perceive Westminster to be its Parliament, and that reflects, for good or ill, a real historical continuity. Secondly, in a union so asymmetrical as the UK, an English Parliament and the government formed from it would swiftly become the dominant political force in England, eclipsing the federal institution and leading (as the Royal Commission on the Constitution recognised long ago as 1974) to the end of the UK. Thirdly, England's problem is not that it lacks a Parliament. Quite the opposite: too much power is concentrated in its Parliament and central government.

This however implies some constraints on the UK government as government of England, which should only promote legislation for England which has the consent of elected English MP's. (The alternative approach, a "devolution discount", underrepresenting Scotland, Wales and Northern Ireland does not avoid the risk of English laws being determined by non-English MPs, merely makes it less likely; and the underrepresentation is unfair on "federal" matters.) "English votes for English laws" has already been implemented in the House of Commons, although in practice makes little difference when the government has a majority in England. It is sometimes objected that this would make Britain ungovernable by UK government without such a majority. This is mistaken. A UK government can only lack an English majority when England is split down the middle; only then can the relatively small number of MPs from the devolved nations hold the balance of power. It would be unwise, as well as unfair, for such a government to push through purely English legislation on the strength of their votes. Moreover, once there is widespread executive devolution in England much of the business of English government will be removed from Westminster and Whitehall and subject to local democratic control. That would be unaffected by the parliamentary arrangements.

A new second chamber

The biggest change at Westminster under a confederal system should be replacing the House of Lords with a chamber which consciously represents the different nations and regions of the UK. This (like the Lords today) should not be where governments are formed, but where government actions and legislation are challenged and reviewed. Its mandate should be democratic, but indirect: it should be formed of representatives who draw their electoral mandate from the different nations and regions of the UK and the democratic institutions there. That means it will be different from the House of Commons, with a different mandate and function, and not a competing forum for formation of a UK, or English, government. Its composition has to recognise the population size in each part of the country, though there is

a case for some overrepresentation for the devolved nations to reflect the fact that their interests are in danger of being overridden. The quid pro quo for this might be a scrutiny role in relation to devolved legislation, as suggested below. Arguably, in addition, there could also be a minority of directly appointed members chosen on the basis of expertise or experience (essentially, to continue improving poorly prepared government legislation).

A key role for this new Senate is to scrutinise and help manage so-called "spillovers" between one part of the UK and another, or between reserved "federal" and decentralised bodies. In terms of legislation, it should have similar powers of scrutiny, amendment and delay as the House of Lords in respect of UK-wide legislation on reserved matters, and powers of scrutiny and proposed amendment (but not delay) in respect of England-only legislation. It might also have powers to propose amendments to devolved legislation (but not delay). In terms of scrutiny of executive action, its remit should include the oversight and scrutiny of intergovernmental working across the UK, including across England. Indirect election should make it possible for senior politicians from the nations and regions both to hold executive office and to participate in the scrutiny and challenge of intergovernmental processes. It may also be possible to give the new second chamber specific powers of not just delay, but veto, perhaps on qualified majority basis, of particular classes of constitutional legislation, such as changes to devolved powers.

Getting there: action now as well as constitutional development

This institutional framework may seem a long way from the UK's present governance, but the seeds of the potential new arrangements have already been sown, in the form of devolution, and the beginnings of English decentralisation. It would be possible to move to these confederal arrangements in an evolutionary way, as English decentralisation moves forward. A number of obviously desirable steps in this direction should be made now.

The most important will be developing a plausible and deliverable plan for English decentralisation, taking the initial hesitant steps much further. Decentralisation cannot be imposed on people, and must respond to demand, but the demand is there: initiatives like "devo Manc" can be taken markedly further and copied elsewhere, though the institutional framework must reflect local circumstances: why should Kent or Cornwall not be a "county palatine"? Two other steps can be taken at the central level. First, the joint ministerial committees between the UK devolved governments should be largely replaced by joint national and regional governmental bodies, including the English regional mayors, focusing first on post-crisis economic development. Secondly, the composition of the House of Lords can gradually be changed to be more regionally and nationally representative. Elected politicians from the devolved nations and mayors from the centralised English regions and cities should be appointed to the Lords (on the basis that they will retire when they demit office).

These changes are of great constitutional significance. But they cannot wait for a rewriting or codification of the whole UK constitution, and nor should they depend upon it. Progress on decentralisation must be made, and then that aspect of the constitution be codified in due course. So a constitutional convention might operate in parallel, looking at ways to codify the new arrangements, especially the changes to the House of Lords and the detailed powers of

the new second chamber, and at the relations between English regionalism and local government. Codification of this aspect of the constitution can take place when the new arrangements are more concrete.

It is now more than two decades since devolution to Scotland and Wales introduced decentralised government to the island of Britain. It is long past time to spread it to England, perhaps in so doing produce a stable, confederal, United Kingdom.