

# Reforming Scotland: A Federal Future



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## **Reforming Scotland**

This is the latest in a series of individual contributions to the publication, 'Reforming Scotland', which aims to set out a possible vision for Scotland's future which can inform and influence the policy debate in the coming years. The contributions are by people from a range of different backgrounds and political perspectives who have looked at how policy could be reformed across a range of different areas and they represent the views of the authors and not those of Reform Scotland. They are published under the banner of our blog, the Melting Pot, since they are in keeping with the shorter pieces done by various people for this which can be found on our website [reformscotland.com](http://reformscotland.com)

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## **About Reform Scotland**

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Reform Scotland, a charity registered in Scotland, is a public policy institute which works to promote increased economic prosperity and more effective public services based on the principles of limited government, diversity and personal responsibility.

Reform Scotland is independent of political parties and any other organisations. It is funded by donations from private individuals, charitable trusts and corporate organisations. Its Director is Geoff Mawdsley and Alison Payne is the Research Director. Both work closely with the Advisory Board, chaired by Alan McFarlane, which meets regularly to review the research and policy programme.

## **About The Melting Pot**

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The Melting Pot is our guest blog page, where Scotland's thinkers, talkers and writers can indulge in some blue sky thinking. **The posts do not represent Reform Scotland's policies.**

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## **A Federal Future**

We seem to have been talking about federalism in the UK for a long time now. In the immediate aftermath of the 2015 General Election, which saw the installation of a majority Conservative government but with the SNP winning 56 out of 59 Scottish constituencies, the then Mayor of London and new MP for Uxbridge, Boris Johnson, called for a federal constitution for the UK. He was quickly followed by Graham Brady, Chairman of the Conservative backbenchers' 1922 Committee, stating that what was needed was "a truly federal arrangement that treats all nations of the United Kingdom similarly".

As the writer David Torrance has pointed out, there is a long history to British consideration of federalism to resolve constitutional tensions. Nearly a century ago, federalism of the UK was considered as a response to the threat of Irish secession. Yet, despite it having been official Liberal and then Liberal Democrat policy for many decades, the time has never seemed right to make much progress.

But perhaps things are changing. Certainly there is much more chatter around federalism than there has been for a long time, motivated mainly by a desire amongst unionists that the United Kingdom needs to be kept together, at a time of resurgent Scottish nationalism. In September 2014 the Society of Conservative Lawyers published a report entitled "Our Quasi-Federal Kingdom", whilst in May 2015 the Bingham Centre for the Rule of Law published "A Constitution Crossroads: Ways forward for the United Kingdom", which came to some similar conclusions.

In November 2014, the Member of Parliament for Romford, Andrew Rosindell, introduced a Bill under the Ten Minute Rule in the House of Commons to create a federal United Kingdom, with separate parliaments for the four component nations, and a UK parliament retaining overall responsibilities, for example for defence, foreign affairs, national security, management of currency, and other clearly defined areas. Whilst the Bill had no prospect of becoming law, it is noticeable that it had support from representatives of no fewer than seven different political parties: Conservative, Labour, Liberal Democrat, UKIP, SNP, Plaid Cymru, and DUP. Graham Brady MP was among the sponsors. There have also been calls from a host of Tory grandees, among them Lord Salisbury, Lord Lexden, Sir Malcolm Rifkind, and even Lord Forsyth, suggesting that some sort of federal settlement is now the way forward.

In all this, there is a danger that the term "federalism" is defined rather loosely, meaning different things to different people. So what exactly is federalism? And why might it now provide a route forward for the UK constitution, when the pressures on the Union appear to be greater than ever?

## **What Federalism means**

At its core, federalism is the belief that sovereignty is entrenched at each layer of government, as opposed to the current UK constitutional position whereby all sovereignty rests with Westminster. Whilst there is devolution to Scotland, Wales and Northern Ireland, these devolved institutions derive their authority from Westminster, and technically could be abolished at any point by an Act of the Westminster parliament (although politically this would be impossible). Enoch Powell made the point when he famously stated: “power devolved is power retained”.

There are a number of countries in the world with long-established federal systems, among them Australia, Canada, the USA and Germany. None of these are identical, but all have survived the test of time. Indeed, the federal constitutions of Australia and Canada were created by previous Westminster governments, as indeed was (to a large extent) the current federal constitutional of Germany.

Under a federal system, each tier of government has substantial responsibility for raising the money that it spends, although there will always be a degree of cross-subsidy whereby the stronger states or regions support the weaker, in order to provide a sense of cohesion and shared risk and reward. Within a federal system, the general rule is that the federal parliament cannot override decisions taken at a state or regional level. The balance of power and responsibility is clear, and of necessity documented in a written constitution. An independent constitutional court is required to act as an arbiter in any disputes.

## **A federal UK**

So what needs to be done to move towards a federal, or even quasi-federal, system in the United Kingdom? We already have substantial devolution to Scotland, Wales and Northern Ireland, and with the passage of the Scotland Act 2016 the Scottish Parliament has the appearance of a sub-national legislator within a federal system. The UK Government has stated that the Scotland Act will make the Scottish Parliament ‘the most powerful devolved parliament in the world’. Not only is this correct, but the Scottish Parliament will become more powerful, at least in financial terms, than comparative legislatures in most federal states, including those in Germany, the USA and Australia. Only Canada will have sub-national states with greater power.

From a Scottish perspective, the most significant difference in creating a federal state would be that the existence of the Scottish Parliament would be entrenched in a written constitution. From a Welsh and Northern Irish perspective, the level of powers, particularly around finance, would require to be addressed.

Creating a federal system within the UK might be achievable without the perception of a great deal of change from the perspectives of those living in one of the currently devolved areas. The real difficulty with federalism in a UK context has always been this: what to do about England.

There are various answers to this question, and it goes without saying that the question about how England should be governed is a matter for the English people themselves. There already exists a vigorous campaign for an English parliament, which has some sympathy even at Westminster. And the new Conservative government has just been elected with a manifesto commitment to deliver English votes for English Laws (EVEL), in an attempt to deal with the West Lothian Question.

It would be entirely possible to create a new English parliament, with powers similar to those held at Holyrood. This would not of necessity require a whole new set of politicians. In his Westminster Bill, Andrew Rosindell proposed that existing English MPs would have dual roles as British MPs sitting in the House of Commons, and English MPs sitting in the chamber of an English parliament. Rosindell felt strongly that the House of Commons should be retained as the federal UK parliament, and that a new English chamber would be required, preferably in the City of London, where “the people of England can take pride with their own symbols, English culture and traditions with the St George flag, just as the Scottish take pride in their parliament, with the Scottish symbols, culture, traditions, and, of course, the flag of St Andrew”.

In theory, this might all make perfect sense, but in practice, such an arrangement would cause difficulty. It is hard to find examples of any working federal systems anywhere in the world where one of the sub-national states has 85% of the total population, and the overwhelming share of the wealth. The US Federation has states with widely varying populations, from Alaska with less than 1 million people to California with more than 35 million, but with 50 states there is not the same concern about over dominance by one unit. The Russian Federation does have a substantial imbalance in terms of power and population, but perhaps is not the best model to hold up as an example.

Given the size and wealth of England, any English First Minister would in practice be as powerful, if not more powerful, a politician than the UK Prime Minister. Within a federal UK parliament, the interests of England would overwhelm those of other federated partners. This is hardly likely to be the recipe for a lasting stable and successful partnership.

The alternative approach is to federate within England itself. But however logical this might seem as a solution, there is very little interest amongst the

English people for the sort of regional government that would be required to balance a Scottish Parliament, or a Welsh and Northern Irish assembly.

When John Prescott in the last Labour government tried to establish a regional assembly in the North-East of England in 2004, the public vote was 78 to 22% against. Although the rise in Scottish nationalism has created more interest in local decision-making in parts of England, including the North, there is not much evidence that the result of a referendum today would be any less decisive. That said, there have been positive developments towards more local autonomy, perhaps the most interesting of which has been in London, where the establishment of the London Assembly and the position of elected Mayor, both seen as radical innovations when first proposed, are now overwhelmingly accepted. Indeed, the former London mayor, Boris Johnson, has been an energetic campaigner for further devolution to London, including of legislative powers.

We have the current Conservative Government now pursuing an active programme of devolution of administrative power to English cities, starting with Manchester (hideously referred to as “Devo-Manc”). On any measure the devolution of substantial powers, and budgets, to the Manchester city region, including control over the £6 billion annual health spend, is highly significant. David Cameron’s appointment of the decentraliser Greg Clark as Secretary of State for Communities and Local Government is a clear signal that the UK government are serious about pushing forward this agenda. And where Manchester goes, we can expect others to quickly follow.

So we could move to a situation, fairly quickly, of a network of strong city regions with devolved administrative powers. There will also be historic counties with a strong identity, such as Yorkshire or Cornwall, who could look to acquire additional local control. One can foresee the map of England filling up with a patchwork of local units, probably not identical in geographic size, population or wealth, but all having an identifiable local focus.

These would be areas of administrative devolution, not legislative. It is difficult to imagine the people of England wanting different laws to apply in Yorkshire from those in Lancashire, for example. But administrative devolution will be significant in reducing the over-centralised power of Westminster, whilst leaving legislative control for the whole country in London.

That would leave a de facto English parliament, sitting within the House of Commons at certain times, or at certain times of the week, following the implementation of EVEL. Whether there would then need to be an English executive in some form is another matter which would have to be considered:

and, if so, whether an English First Minister would be required, or whether that job could simultaneously be held by the UK Prime Minister.

This would not be pure federalism in any sense, more likely “quasi-federalism” as suggested by the Society of Conservative Lawyers. But the history of the development of the UK constitution has been one of incremental change, and messy, but working, compromises, which in theory make very little sense, but in practice can hang together very well. It would be a very British solution to an historic problem.

And it would also allow us to deal, for good, with two other constitutional problems which are seemingly irresolvable: the West Lothian Question and reform of the House of Lords. The latter could be replaced with a Senate, providing equal representation for each federated part of the UK, thus providing the requisite political balance and an appropriate counterweight to the House of Commons, with its own electoral mandate.

### **Why Federalism?**

The 2014 referendum on Scottish independence left a very divided country. It is hard to see that the UK is sustainable in an unreformed state if 45% of the population of one component part wish to leave. So the drive for change now seems unstoppable, and for unionists reform must be better than dissolution.

But it is not just in Scotland that there is a desire for change. There is a view right across these islands that, even with the advent of devolution, the UK is still too centralised a state. Such a view is now probably now more strongly held in those parts of England furthest from London. A federal structure benefits not just Scotland, Wales and Northern Ireland, but is a response to the legitimate demands from communities across the whole UK for a greater say.

A move toward a federalist or at least quasi-federalist arrangement would have the beauty of dealing with a number of constitutional issues at one stroke: addressing the democratic deficit issue affecting not just Scotland and Wales, but other parts of England, answering the West Lothian Question, making more transparent funding arrangements for different parts of the UK, and allowing us to move on with reform of the House of Lords into an effective second chamber providing an appropriate constitutional balance to the Commons.

Crucially, federalism provides the potential for a permanent, lasting, stable, political framework for the UK. It is one of the weaknesses of devolution that it is, as the former Secretary of State for Wales Ron Davis once said: “a process, not an event”. This has led us regularly revisiting the devolution settlement for Scotland in the few years that the Scottish Parliament has existed, with the Calman Commission and then the Scotland Act 2012, then the Smith

Commission in 2014 and the new Scotland Act 2016. Many of a unionist persuasion are left wondering: where and when will this process end, if ever?

In contrast, federalism is an event, not a process. Once established, and codified in the written constitution, changing the ground rules in any direction would be much more difficult, and therefore a stable constitutional framework for the UK would be established.

From a political perspective, as the Welsh Conservative David Melding has argued, a federal system has attractions for both unionists and nationalists. Unionists might prefer a system where Westminster continues to be sovereign, but they will see in federalism a way of providing stability and balance to a currently unstable and unbalanced set of arrangements. Federalism entrenches the principle of the pooling and sharing of resource across the different parts of the UK. It is, contrary to the claims of many nationalists, inconsistent with the principle of full fiscal autonomy for any component part. And in some federal systems, such as the USA, there is no unilateral right for any state to secede from the Union.

But there will also be attractions for nationalists. Whilst federalism clearly secures Scotland's place in the UK, it nevertheless entrenches in law the existence of the Scottish parliament, the status of which will be enhanced, and protected by a written constitution and formal arrangements for dispute resolution. Undoubtedly many of those who voted 'Yes' in the independence referendum would be attracted to vote to remain in the UK in any future referendum if a federal constitution were established as an alternative to separation.

David Torrance has written that federalism provides, "the only constitutional model that would give adequate and coherent expression to the delightfully messy status quo". There are substantial practical difficulties to be overcome, not least persuading the good people of England that this is a route they want to go down. Before even contemplating this, they would want to know that there would not be a substantial multiplication of the existing numbers of politicians, and expenditure on government, and that would involve readdressing both the size and composition of the current Houses of Commons and Lords, and looking again at systems of local government. Any solution is unlikely to be simple and neat, but more likely a very British form of compromise, which might be more quasi-federal in nature than the purely Canadian or Australian model.

The Society of Conservative Lawyers call for a new "Statute of Union", which would begin by stating that "It is hereby declared that the United Kingdom is a quasi-federal, voluntary union of England, Scotland, Wales and Northern

Ireland". In so doing, they recognise the statement from David Melding that "declaring that the United Kingdom is a federal state is more important than writing the federal constitution". This is a sensible way forward, and will need to be backed up by detailed work on the creation of a new constitution. Whether that is best achieved through a Royal Commission, a constitutional convention, or some other vehicle, is a matter for debate, but it is important that there is as broad as possible public support for any new constitutional settlement, and that would probably mean putting the whole issue to a referendum across the United Kingdom at a future point.

Whatever the practical steps required, federalism of some sort has the potential to be the common ground which unites a divided nation in Scotland after 2014's referendum vote. It is also an opportunity for the current Conservative Prime Minister to put his mark on history as the man who reformed the UK constitution and kept the Union together. David Melding has argued that what is now needed is politicians of vision in Westminster prepared to take this initiative forward. For Scotland's sake, and the UK's, I hope that we have them.



