

## **Whither the UK Constitution?**

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A U3AC day conference on future options for the UK Constitution.

Speakers:

**Steve Marshall**, Emeritus Professor at Anglia Ruskin University U3AC Director of Studies

**Andrew Gamble**, Emeritus Professor of Politics at the University of Cambridge.

**David Howarth**, Director of the MPhil in Public Policy in the Department of Politics and International Studies at the University of Cambridge, Reader in Private Law in the Department of Land Economy.

Chair: Beth Morgan

### **If it ain't broke, why fix it?**

**Steve Marshall**

The UK is a hereditary monarchy, in which the crown retains significant rights. At the same time, it is a democracy, ruled by governments freely elected through universal suffrage, in secret ballots which are honestly counted.

How do we manage to be both these things at the same time? And does it matter that there is a huge gap between the notional position, and the way things actually operate?

Before the 1992 election, there was talk of the possibility of a hung parliament. In the last few days of the campaign questions were being asked about what would happen - who would the queen invite to form a government if there was no majority party?

Norman St John Stevas, as a constitutional expert, sought to enlighten us all on Panorama. The gist of what he said was "The Palace has a plan, and at the appropriate time, the queen's advisors will tell her how to act.". What he was saying, in effect, amounted to "Don't worry your pretty little heads about all this – your betters have things sorted, and when the time comes you will be told what is going to happen".

Things have not changed much since then. Our betters still keep our constitutional arrangements largely to themselves. Few UK citizens have a real understanding of how the country works.

In most other countries it is a lot easier to find out how government works, because it is set down in a formal constitution which sets out the ground rules for its government.

The UK is almost unique in the developed world in not having a formal constitution. We do have a lot of constitutional law, but it has no special status. In most other countries, changing the constitution requires a special procedure – typically, a two thirds parliamentary majority, sometimes followed by a referendum. But in the UK a simple majority in Parliament is required, which is what gives us our much-vaunted constitutional flexibility.

Before considering how much that matters, let us reflect on some aspects of our present system for electing governments.

We will be having an election later this year. We will all be free to vote for our choice of candidate, in a secret ballot which will be honestly counted. So the House of Commons which results will reflect the broad spread of opinion across the country.

Or will it? Consider the following:

1. There is no law which says that only members of political parties can stand for election to Parliament. But in practice, only party-backed candidates have a realistic chance of being elected. Since 1997, there have never been more than two Independents elected in a general election.

2. Two thirds of seats are "safe" for one party or another – so in these seats, the only people genuinely involved in the choice of MP are the members of the incumbent party, who can at least help select their party's candidate.

3. Political party membership has been in decline in the UK for many years. Currently, the combined membership of all political parties is about 1% of the electorate. So the reality is that in two thirds of seats, the MP is chosen by the members of the incumbent party. In the remaining third, voters can choose between several candidates – but only those put forward by the 1% who belong to one party or another.

4. A result of all this is that increasingly, MPs are drawn from a political class – people who have decided to make politics their career. All parties run lists of approved candidates who have been vetted by the party and approved as potential candidates. Only people on the list can apply for selection by a constituency party.

5. So can they realistically be said to have been chosen by the electorate, and to represent their constituents? Whether or not an individual voter agrees with the policies of the winner of the election, that winner ought to be someone the voter recognises as, in some sense, being like him or her. But increasingly, the candidates chosen by the main parties are career-driven clones from central office, with no real link to the constituency they represent.

The vote later this year will be conducted under First Past The Post. This is a system which works perfectly well when there are only two parties involved -which in the years after WW2 was pretty much the case – more than 90% of all votes cast went to either Labour or the Conservatives:

Year	Vote%	Electorate %	Commons Seats
1945	87.4	63.6	603
1950	89.4	75	612
1951	96.8	80	616
1955	96	73.7	621
1959	93.2	73.3	623

But things have changed since then:

Year	Vote%	Electorate %	Commons Seats
2001	72.4	43	578
2005	67.6	41.5	545
2010	65.1	42.3	565

(Electorate % = proportion of the electorate as a whole, taking turn-out into account.)

This has an interesting effect. If we compare recent election results under FPTP with what would have been the result under a perfectly proportional system, we see:

	Actual			Perfect PR		
	Lab	Con	LD	Lab	Con	LD
1997	418	165	46	272	193	106
2001	412	166	52	256	200	115
2005	355	198	62	216	199	135
2010	258	306	57	180	224	142

What this suggests to me is that a system which in the 1940s and 1950s reflected the realities of the situation, now serves instead to artificially preserve a situation which limits our effective choice of government to just two parties, when opinion no longer divides neatly into two camps. Could this explain, at least in part, the current situation, where in the last several elections more people have abstained than voted for the “winning” party.

<u>Share of electorate in recent elections</u>					
	Turn-out	Lab.	Con.	LD	NOA (None of the above)
2001	59.4	24.2	18.8	10.1	40.6
2005	61.4	21.6	19.9	13.5	38.6

2010 65.1 18.9 23.5 15 34.9

If the great virtue of our unwritten constitution is that it can respond quickly to changing circumstances why do we still use an electoral system which so patently no longer reflects reality? Could it be that neither of the larger parties wants a change to a system which pretty much guarantees only they are serious contenders to form a government?

To my mind, this is part of a huge downside to the flexibility of our constitution. Given that under FPTP a party can win a large majority in Parliament with the support of a rather small proportion of those eligible to vote (e.g. 2005, when Labour had an overall majority of more than 60 on a vote share of 35.2% - which, because of low turnout, meant that only about 22% of the electorate voted Labour), this seems a very risky system. It is open to abuse by a party seeking to gain advantage from constitutional change; and even when not flagrantly abused, can lead to changes which have not been properly thought through and which therefore have unforeseen consequences – most dramatically perhaps in the case of Scottish devolution, which was meant to head off nationalism but in fact had the opposite effect.

Recent years have seen an unusual amount of constitutional change, which in many democratic systems would have provoked lengthy and serious debate and would have required wider support than just that of the governing party. We have seen huge transfers of power from local authorities to central government; devolution of powers from Westminster to Scotland, Wales and Northern Ireland: partial reform of the House of Lords; the introduction of new (to the UK) ways of electing representatives – we now use at least five different electoral systems: the introduction of fixed-term parliaments; introduction of a Human Rights Act and a Freedom of Information Act, and probably several others I have missed.

Change on this scale can radically change a country. And yet these changes were introduced without many people outside Parliament even noticing. Because of the famous flexibility of our constitution they could be enacted by a simple majority in Parliament - a majority which did not depend on having the support of a majority of people.

Whenever change to the system is proposed, we are told that ours is one of the oldest democracies in the world, that we enjoy more freedoms than almost anyone else, and our politicians are the least corrupt, etc etc).

There is some truth in this – we are relatively free; we do have the rule of law (in how many countries can one sue the government in the courts with some hope of success?)

But if things are as good as the political elite tells us, how does one explain the following, based on figures for 2010:

UK compared to Nordic countries (Sweden, Denmark, Norway, Finland)

	UK	Nordic
Turnout in parl. elections (average, 2000s)	60%	79%
Membership of political parties	1%	5%
Proportion of women MPs (2010)	22%	41%
Global ranking for levels of press freedom*	26th	2nd
Global ranking for absence of corruption**	20th	4th
Human rights compliance (score out of 22)	19	21
F.T employees earning <2/3 of median earnings	21.6%	
7.9%		
Overseas aid as a proportion of national income	0.4%	
0.8%		

\*By 2014 the UK had declined to 33 in the world ranking (source: Reporters without Borders:[http://rsf.org/index2014/data/index2014\\_en.pdf](http://rsf.org/index2014/data/index2014_en.pdf))

\*\* By 2014 the UK had risen to 14<sup>th</sup> place – whether because of less corruption here, or more elsewhere, is unknown( <http://countryeconomy.com/government/corruption-perceptions-index>).

Which suggests that the UK is, to say the least, not the most developed democracy in Europe.

Issues facing us today include:

- Constitutional arrangements across the UK have become a mish-mash of devolved government (using a variety of arrangements) everywhere but England.
- Parties play a crucial role in political life; but party membership has fallen to 1% of the electorate (in the 1960s it was about 10%).
- Two thirds of parliamentary seats are “safe” for one party or another.
- Most votes cast in general elections are “wasted” – either surplus votes for a winning candidate, or votes for a losing candidate who, in many cases, could be clearly seen well in advance to have not a snowball in hell’s chance of winning.
- The powers of local government have been steadily undermined by governments of all political persuasions.
- Turn-out in elections is on a long-term downward trend.
- Our electoral system produces wildly disproportional results.

We need to have these issues (and others – this is not meant to be an exhaustive list) in mind as we consider whether this might not be the time for us to take a step back and consider properly what kind of country we want to be, and how we should be governed.

For this is something we have never done in modern times. We have been content thus far to live with a system which has grown up as a result of a long series of adjustments to the status quo ante. So we have ended up as a “constitutional monarchy” without a formal constitution; a country in which most citizens have little idea how government works.

I think we deserve better than this. We deserve to know how our country is run; and to have some guarantee that it is not going to change without proper consideration. Constitutional law, in other word, should not be seen as just the same as any other kind of law.

So, my key points are:

- Changes to our constitution need to be treated with much more care than they have been in recent years;
- Changes to the way we are governed ought to involve wider consent than a simple majority in a Parliament usually controlled by a single party;
- The key consideration should be whether any proposed change will make our system of government better at reflecting the will of the electorate; the impact on particular political parties is NOT the issue.

More than 2000 years ago Aristotle said “If liberty and equality are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost.”

I think Aristotle had a point. Is our present system really the best we can do in terms of maximising participation in democracy?

“If it ain’t broke, don’t fix it” is the political elite’s all too frequent response to constitutional issues. What I am suggesting is that our present system is seriously broke, and needs fixing.

### **Does the UK have a future?**

**Andrew Gamble**

In recent years the rise of the Scottish National Party (SNP) in Scotland has raised the question of whether the United Kingdom will continue to hold together or whether it will break apart. After the SNP became a majority government in Scotland following the elections for the Scottish Parliament in 2011, the SNP pressed Westminster for a referendum to be held on independence. The referendum was held on September 18<sup>th</sup> 2014 and resulted in a clear margin of victory for the pro-Union side (55% to 45%) but this has not settled the issue. It has fuelled new demands in Scotland for the devolution of further powers to Holyrood, and has raised questions about the constitutional arrangements for all the other parts of the United Kingdom, including

England. The United Kingdom has many peculiarities deriving from its formation and history. It is composed of four nations but these are of very unequal size, with 85 per cent of the population resident in England. The four nations were incorporated into the union in different ways which has resulted in many constitutional and political anomalies, which became particularly marked as the UK moved towards democracy and the creation of a modern state at the end of the nineteenth century. Attempts to deal with these anomalies at that time failed, and the first fracturing of the Union occurred with the creation of the Irish Free State. The rest of the Union survived, the anomalies concealed by the informal conventions which governed the relationship between the centralised Westminster state and the different parts of the Union. A new phase opened in the 1970s, however, with the emergence of nationalist parties in Scotland and Wales and the suspension of Stormont. Attempts at reform again failed, but during the 1980s it became clear that the status quo could not be sustained for much longer. Real change came with the enactment of Scottish and Welsh devolution in 1998, the restoration of a Scottish Parliament and the creation of a Welsh Assembly. However this reform was incomplete and failed to tackle many of the anomalies which devolution has created.

These anomalies are not new and were what made the Irish Question a hundred years ago so difficult to resolve. There were five main aspects to the Irish Question. Firstly, did the Irish want power to be devolved to them? Secondly, if they did, how should powers be divided between the Westminster and the Dublin Parliaments? Thirdly, should the Dublin Government raise its own taxes to fund its spending or should it rely in whole or in part on taxes raised by Westminster? Fourthly, once the Dublin Parliament had been created, should the Irish still have representation at Westminster, and if so should it be on the same basis or a different basis to other UK MPs? Fifthly how should the question of sovereignty between the two Parliaments be resolved?

This last issue was the most difficult of all, since the doctrine of parliamentary sovereignty meant that the Westminster Parliament claimed unlimited sovereignty over all subordinate bodies, and therefore potentially claimed the right to overrule or dissolve any subordinate Parliament. The devolved Parliament however claimed its own sovereign power, and in the absence of a codified constitution, there would be no institutional or judicial framework to resolve conflicts, leading to frequent tensions.

The Irish Question was ultimately not resolved peacefully, and the 1916 uprising and its aftermath eventually led to most of Ireland breaking away. It was the first big fracture of the United Kingdom. Between 1930 and 1970 there was relative constitutional calm, with no strong separatist movement anywhere in the United Kingdom. Each part of the United Kingdom was governed in a different way, with Home Rule in Northern Ireland, while in Scotland the Scottish Office (created in 1885) was given a great deal of autonomy. In Wales by contrast the Welsh Office was not created until 1965, by which time the situation had already begun to change. The SNP won its first by-election in 1967, and in the 1970s support for the SNP surged. This led to the first devolution proposals, initially proposed by the Conservatives, then taken up by Labour. Large parts of both the main parties however were strongly opposed to any form of devolution, arguing that it would lead to a strengthening of separatist forces. Unionist supporters of devolution argued instead that devolution was the only way to reduce the appetite for separation. Tam Dalyell posed the West Lothian Question. Once significant powers had been devolved to Scotland how could Scottish MPs at Westminster be allowed to vote on issues which affected England, while English MPs were prevented from voting on issues which affected Scotland? His Question has still not been answered.

Labour's devolution bill ultimately failed, which helped precipitate the collapse of the Government. The new Conservative Government was opposed to devolution and refused to countenance any step towards it. Conservative support in Scotland had already fallen substantially, and it continued to decline in the 1980s. The two Unionist parties which increasingly dominated Scotland – Labour and the Liberals, later Liberal Democrats – made common cause in organising the Scottish Convention (the SNP and the Conservatives boycotted

it). The Convention issued a Claim of Right and called for the restoration of the Scottish Parliament. By the 1990s the Conservatives had become too weak in Scotland to resist the tide flowing towards devolution, which was finally enacted by the Blair Government in 1998, following referendums in both Scotland and Wales.

Devolution created a new political dynamic. At first the new arrangements saw Labour and the Liberal Democrats in the majority in the new Scottish Parliament, but once the Labour Government became more unpopular, particularly after 2003, the SNP made increasing gains, and was able to form a minority government in Holyrood in 2007, and then won an absolute majority in 2011, the outcome which the proportional electoral system for the new Parliament had been created to avoid. The success of the SNP reflected a steady erosion of support for the Union and for the Unionist parties in Scotland (Wales was much less affected). It made the constitutional anomalies much more visible and the focus of increasing political conflict, leading to the referendum on independence which was only narrowly lost. Since the referendum however the political momentum has been with the SNP, even though they were on the losing side. They have gained members and are now the largest political party in Scotland. The opinion polls indicate that they pose a serious threat to Labour in the 2015 election, and may emerge for the first time ever with the largest number of Scottish MPs at Westminster, threatening Labour's chances to form a majority Government.

Is the drive towards separation and the breakup of the United Kingdom inevitable, or are there remedies which might avoid it? In the referendum campaign major new powers were offered to the Scots if they voted to stay in the UK, amounting to the devo max option which the British Government had refused to put on the ballot paper. The concession of devo max to Scotland created resentment among Conservative MPs, and led David Cameron to couple the increased powers for Scotland with a new deal for England, English Votes for English Laws. But this will be very difficult to deliver without increasing the pressures towards complete separation.

The constitutional remedies to prevent a breakup of the United Kingdom fall into four main categories. The first proposes to deal with the English Question by decentralising Westminster government and giving significant new powers either to English local government or to the English regions. This would be largely administrative devolution; there is little support for the creation of regional parliaments or assemblies. But administrative devolution, although welcome for other reasons, would not address the problem of the imbalance of powers between Scotland and England in the Westminster Parliament.

The second solution is to create an English Parliament and an English First Minister, so that England would be given the same institutions as have been granted the Scots. This is a logical solution, but if introduced would almost certainly lead to the breakup of the UK, because the English Parliament representing 85 per cent of the population would dominate, and relations between it and the UK Parliament and Prime Minister would be very difficult to manage. The smaller nations would feel that their interests were being overridden or ignored, and the Union would break up in mutual acrimony.

The third solution is to embrace federalism. This too has an obvious logic – the British system has become quasi-federal already. But there are two conditions to make a federalism work. First there would have to be a new constitution which would be above all the Parliaments in the UK, including the Westminster Parliament, and would set out the powers of each level of government, as well as an institutional mechanism for adjudicating disputes. Secondly, the problem of the size of England would have to be addressed. There are many successful federal constitutions in the world, but none have one unit with 85 per cent of the population. The maximum is around 35 per cent (in Canada). But as already noted this would not be easy, since there is at present little appetite for regional assemblies or parliaments in England.

The fourth solution is that favoured by David Cameron and the Conservatives - English votes for English laws (EVEL). William Hague was charged to bring forward proposals, and in December 2014 proposed three options. Each of them involves a change to parliamentary procedure, which avoids the creation of a new Parliament, and allows English MPs alone to vote

on measures which only affect England. The difficulty with all the variants is firstly deciding which measures are wholly English and do not have any implications for the rest of the UK; secondly deciding whether English MPs have a veto on English only legislation or whether the whole House can still overrule decisions reached by Committees of English MPs. The difficulty for supporters of the proposals is that unless the changes create a de facto English Parliament within the Westminster Parliament they are unlikely to be seen as a solution to the problem, and if they do, the new arrangements will have all the drawbacks of the English Parliament solution, and in time will threaten the Union, by undermining the possibility of UK-wide government.

For those that want to preserve the Union there is no easy solution. That is why the preference often is for muddling through, and trying to ignore anomalies like the West Lothian Question. Do not ask it, has been Jack Straw's advice. But the politicisation of relations between the nations which make up the UK has probably gone too far for that to be viable any longer. More radical remedies may be needed. But first supporters of the Union should ask themselves, what is the Union for? The referendum campaign was notable for the abundance of optimism and hope in the future on the Yes side, and the absence of it on the No side. Most Unionists, with the exception of Gordon Brown very late on, found it hard to think of positive reasons for keeping the Union. The No Campaign was predominantly negative. Unless a new common purpose and common interest can be forged of the kind which sustained the Union in the past, the Union cause may wither in Scotland and elsewhere. A new vision for the Union would need to be a federal one, but a federal UK would need some radical constitutional thinking and agreement about a great number of questions which the English have generally preferred to avoid.

### **A Formal Constitution for Britain?**

**David Howarth**

Britain is usually said to lack a 'written' constitution. That is not entirely accurate, since much of Britain's constitution takes the form of statute law, but it does lack a formal constitution, in the sense of a consciously designed system of state institutions. The purpose of this talk is to consider the prospect of Britain adopting a formal constitution.

There are a number of common misconceptions about formal constitutions. They do not, for example, necessarily protect individual rights or entail judicial powers to strike down legislation. But they do offer a characteristic solution to a number of characteristic problems. One example of such a problem is how to fill an institutional vacuum after an invasion or a devastating military defeat or a violent revolution. Another is how to change fundamentally the political values pursued by a state.

Britain does not currently face the first kind of problem, and there is insufficient consensus about what kind of political values it should pursue to make plausible adopting a formal constitution as a solution to the second kind of problem. It might perhaps soon face a third kind of problem that sometimes leads to the adoption of a formal constitution, namely a sustained failure of existing institutions to produce effective governments, but, realistically, the most likely response to that problem if it occurs will be to attempt to muddle through.

But Britain does arguably face a fourth kind of problem that characteristically leads to attempts to adopt a formal constitution, namely the problem of creating a federation. If the only solution to the problem of the relationship between Scotland and England, short of separation, is to create a federal system, it seems difficult to see how such a federation can be created without the adoption of a formal constitution.

## **Contributions from the floor**

Diana Young, John Abbott, Nick Hemingford, Trevor McCann, Barney Rickett, Martin Davison, Victor Whittaker, Anthony Cooper, Graham Gudgin, S. T. Moran

### **Diana Young**

Although the UK no longer had as much influence these days, it was still important to retain the UK as a unit, particularly with regard to the financial institutions.

we also have a united roll to play in NATO and I feel that, if we split up, we would lose any influence we currently have, albeit diminished.

### **John Abbott**

Following the Scottish referendum, and subsequent hawkish comments by Alex Salmond, the die has been cast for either the break-up of the UK, or a significant change in its governance. If the SNP holds the balance of power at Westminster in May, it will extract a very high price for its co-operation with either a coalition or a minority Government. If it does very well in seats held, it will be a Party unashamedly putting the region's needs/wants above the collective interests of the UK

### **Nick Hemingford**

I understood why people were looking for ways to keep the UK together apart from anything else because it offered fruitful subject matter for political "nerdism", to which I was also addicted. But it might not be possible or desirable - the functions of the UK parliament could be delegated both downwards to some sort of regional units and upwards to Europe. Recalling that it was said of me at the Cambridge News that "the editor's indecision is final", I wondered if the best strategy might be just to wait and see.

Later I wondered what the difference was between fragmentation and delegation.

### **Trevor McCann**

The Belgian experience of coalitions should be of interest. Various reforms over the years have resulted in Belgium becoming essentially a federal state. Multiple parties mean that coalition governments are the norm. Belgium was widely derided a few years ago when it took about 18 months to form a new coalition government. It was much less widely reported that the country did not collapse - because 'ongoing' business agreed by the previous coalition continued to be implemented - and when the coalition was eventually agreed, the programme was also agreed and, importantly, was stuck to by the coalition parties. As a bonus, it was subsequently noted that the budget deficit had not increased during the process!

UK Prime Ministers get to pick their own Cabinet Ministers without any formal examination by anybody in Parliament (or anybody outside) of their qualifications for the post, their opinions on what needs to be done once appointed etc. Why is this considered acceptable? Why can't we at least have something akin to the US Senate hearings? Or even, dare one say it, with some qualified non-parliamentarians included as well

### **Barney Rickett**

Speakers at the 2015 U3AC workshop on the British Constitution highlighted the absence of a formal UK constitution and the ongoing trend to devolution. They raised the prospect of the fragmentation of the UK or a possible federal form of government. But they all emphasized the disparity in population between England (85%) and Scotland and smaller still N. Ireland and Wales. Such a disparity would unbalance a federation and make it unmanageable.

Here I outline a federation of these 4 units, with an attempt to counteract the unbalance by dividing political power between two houses. The two houses would be analogous to the US



Senate and House of Representatives. The latter would be based on the current House of Commons modified to ensure proportional representation of the entire population across the 4 units of the federation. The “UK Senate” would replace the House of Lords. I am ignoring the role of the monarchy, which perhaps could be patched onto the top of the federation?

Membership in the UK Senate would assign power equally to the 4 units. For example there could be 15 senators elected from each of the 4 units (60 total). This is the attempt to compensate for the imbalance that arises from proportional representation in the Commons. Then the question is how to resolve the conflicting legislative actions from the two houses.

Here’s one way.... Give the Senate decisive control over Foreign affairs and defence and military spending. Give the Commons decisive control over Health, social services and education. There might even be some further delegation of these matters to the local level. The over-arching problems centre on taxation and the budget. There would have to be a negotiated agreement between the Senate and the Commons. In the USA such “House-Senate” negotiations and compromise are critically important in almost all legislative actions.

By giving each house “decisive control” on some matters, we would remove the need for these difficult compromises on those matters. However, it is possible that reaching a compromise on the budget might be the show-stopper.

Such a constitution subjugates the two houses to a law which, as Steve Marshall emphasized, might be unacceptable to the majority of MPs and other UK politicians. Evidently, the rule of law is essential to a satisfactory solution. We might need a new constitutional law court to adjudicate challenges. The importance of an independent judiciary (as in the USA) remains critical.

I have given no thought to possible terms for representatives to the two houses. Neither have I considered how the existing political parties would adapt or object - nor how a government could be formed and a prime minister and cabinet be elected or appointed!

### **Martin Davison**

My own contribution to the debate picked up on Steve Marshall’s analysis of the gross disproportionality of the Westminster electoral system. I reminded the conference of the 1983 general election in which one party, the SDP-Liberal Alliance, polled 25.4% of the votes for a mere 23 parliamentary seats (3.5%) while another, the Labour Party, polled 27.6% of the votes for 209 (32.1%). I pointed out to the conference that UKIP might well poll over 20% of the votes in the May 2015 election with one of two possible consequences:

1. UKIP crosses some sort of barrier and actually manages to achieve a more or less proportional number of seats. In this case it might well play a significant rôle in the coalition negotiations which everyone expects to follow an inconclusive election. Many conference members might deplore this development.
2. UKIP suffers the same electoral misfortune as the Alliance. The demographic in question might not accept this perceived unfairness with the same polite resignation as their 1983 predecessors.

In either eventuality UKIP voters are highly likely to number amongst those who consider the devo max bribe offered to the Scots in the dying moments of the referendum campaign to be unfair and unconstitutional without some sort of compensation (EVEL or a new parliament) for the English. Workable English solutions are elusive, to say the least. So, this could cause trouble in circumstances where 45% of Scots voted for independence, both Holyrood and the body of Scottish Westminster MPs are likely to be dominated by the SNP and the three main UK parties are morally obliged to honour their “vow” and deliver devo max to the Scots. Muddling through in the traditional manner will therefore be far more difficult in the next few months and years. For what it’s worth, although I did not speak on this specifically, I share what seemed to be the majority opinion of the conference, that the UK might not survive for very long in its present form. My own view is that throughout the UK’s relatively short history the important emotion of national pride has in fact attached either to country or to Empire rather than to the UK. Nobody

seemed to make a positive case for the Union in the Scottish referendum campaign, the monarchy always emphasises the Commonwealth anyway and, now that there's no Empire, the rest of us are left with one of the four constituent countries.

### **Victor Whittaker**

I was pleased to learn that there are others beside myself who believe that our country faces a severe, existential problem from the activities of the Scot Nats. This problem is not going to go away as a result of the defeat of the 'yes' vote in the recent Scottish referendum. We need a high-level advisory committee to sort out the various alternatives. One of these should be the creation of a written constitution and a constitutional court to interpret it. Parliament would have to agree to surrender its sovereign power in this particular area. Here the present German constitution provides a model. This is a federal constitution with an upper chamber representing the provinces; these vary in size and population and an allowance for this is made by the size of their representation in the upper house. The distribution of power between the federal government, the provinces and the various local governments are precisely defined by the constitution as are the appointments of the prime minister and the head of state, who has no executive powers but is the guardian of the constitution and can intervene in the event of a 'hung' parliament.

I have considered whether a similar constitution could be devised for the UK. I believe it could, provided England were divided into provinces of approximately equal sizes to Scotland, Northern Ireland and Wales. These might consist of Wessex, Kent, East Anglia, Mercia, Northumbria, London and an (other) urban conglomerate(s) involving Birmingham, Manchester, Leeds, Sheffield and Liverpool. The ten or eleven provinces envisaged would have populations roughly equivalent to those of the German *Laender*, of which there are sixteen in a nation of 80 million. There is of course not the slightest possibility that such a solution will be put forward; we shall 'muddle through' as always.

Cannot the Scot Nats be put under pressure to tell us just what they propose? Will they be a republic like Ireland? Will the Queen be a private UK citizen when she crosses the border to enjoy the delights of Balmoral? Will she have to display a UK passport? Will Scotland apply to become a member of the Commonwealth? What currency will it use? I feel sure we English will see its departure with a sigh of relief - no more its over-representation in our House of Commons and the financial subsidy it gets from us. Hurray!

### **Anthony Cooper**

I suggested to Professor Andrew Gamble that it might be productive to study the financial arrangements made at the time the Irish Free State was set up. Those arrangements seem to have worked, even after the Free State became the Republic of Ireland, until the Irish pound, or punt, floated away from sterling in the 1980s. I discussed the question of autonomous regions with David Howarth and he agreed with me that England does not readily split up into viable regions. It was he who suggested that the most we might be able to do would be to revive the old Council of the North, although where precisely "the North" begins is obviously a debatable question. I raised the idea of an English Grand Committee, and this was discussed by the panel. It was agreed that it might be a solution to the EVEL question, at least in the short term.

I tried to emphasise the fact that HM Treasury and the "independent" Bank of England, let alone the OBR, would have to be completely reorganised if true regional devolution is to be achieved. If they continue to control the purse strings then devolution would be somewhat illusory.

I find the idea of the Balkanisation of the UK quite bizarre. After all, as I mentioned at the meeting, England is about the size of New York State and the British Isles as a whole are smaller than the State of Oregon. I hope that the idea will go away but fear that it might be with us for some time. David Cameron was completely outmanoeuvred by Alex Salmond at the time of the Edinburgh Agreement. It looks as though Salmond will achieve Devo Max for Scotland whatever happens at the General Election.

I fancy that whoever becomes Prime Minister after the General Election will effectively be a prisoner of the Scottish Nationalists in the same way that Gladstone was a prisoner of the Irish Nationalists during his last spells as Prime Minister.

I fancy that most of the delegates present today were resigned to the prospect of a constitutional upheaval. I personally regard myself as “British” and would want the Union to remain intact.

### **Graham Gudgin**

For me the key constitutional issue is the potential break-up of the UK. This has not been settled by the recent referendum and it is entirely plausible that Scotland could leave the UK within 10 years. In my mind the potential loss of Scotland far outweighs in importance either the question of low election turn-out or English votes for English issues. The latter two issues have dominated this conference, and the latter appears to exercise our politicians much more than the issue of Scotland leaving the union.

English politicians and perhaps English voters in general, seem to have difficulty focussing on the survival of the UK in its present form. They have only a weak sense of the value of the UK including Scotland (or Northern Ireland). A sense of Britishness has been eroding while Scottish and indeed English national identity has been strengthening. Linda Colley, in her influential book ‘Britons’, argued that the British identity was forged in the 18<sup>th</sup> century. It followed the union with Scotland and in her view was based on a common religion (Protestant) and an enmity to France which Britain spent much of the century fighting.

A common view is that these underpinnings of Britishness are long out-dated, however they have their modern equivalents. British values still tie together all parts of the UK. Social Surveys show that Scots have more or less identical views to the English on almost all social and economic issues. Although, thankfully, we no longer fight the French, we retain a common interest in defence in a still dangerous world, and are stronger if the UK stays together and retains its Scottish bases. These are issues which need to be widely debated but get little coverage. Britain was said to have gained an empire ‘in a fit of absent-mindedness’. We could easily lose Scotland is a similar frame of mind.

For the time being it seems that the wider question of Scotland’s place within the UK will take second place to concerns about English votes for English issues. This is the wrong order of priorities in my view since if Scotland leaves the union it will be irrelevant. We need to secure the union before worrying about whether Scottish MPs could overturn an English majority in Parliament voting on English issues (something which could only have been possible in three governments since WW2).

This English question’ may however have to be dealt first if only to clear space for politicians to focus on the bigger picture. Many will happily try to devise elaborate institutional reforms of parliament or suggest a new regional tier of Government. As a member of John Prescott’s Labour Commission on Regional Government, I learnt from that fiasco that the English are allergic to any suggestion of new tiers of government. The only local bodies to which at least some of the English retain a sense of identity are the ancient counties. If we do not wish non-English MPs to influence the conduct of health, education and similar matters within England, the easiest thing to do is to devolve more power over these matters down to the English counties. We could reverse the centralisation of secondary education which has occurred via the Academies, and let counties or groups of counties run the NHS. The English NHS is said to be the largest employer outside the Chinese People’s Army, and could be run in smaller units. Northern Ireland runs its own NHS and has amalgamated this with social services, despite having a population little larger than Essex or Devon, and smaller than Lancashire or Yorkshire. This would inevitably introduce more ‘postcode lottery’ variation in standards, but people would have a greater incentive to turn-out in local elections to get what they want.

### **S. T. Moran**

New Structures while maintaining historic links:

- \* The Scots have been promised a bill to give further devolution of power (Devomax). This could be the catalyst to seriously apply the principles of subsidiarity across the UK i.e. that those in the best position to manage resources are given the necessary authority and responsibility to do so.
- \* A Federation could be formed. Each Home Nation already has a Parliament Building. Home Nation business could be dealt with Belfast, Cardiff, Edinburgh or London. Federal business could be dealt with by the four home parliaments meeting in joint session by video link. All home nation MP's could wear two hats, one Home Nation, one Federal. This could be "practical glue" to functionally keep the UK as one.
- \* UK could be divided into 20 regions along the lines of [http://www.electoralcalculus.co.uk/regional\\_defns.html](http://www.electoralcalculus.co.uk/regional_defns.html), 16 of which refer to England. Each English Region could be made up of existing County Councils (CC).
- \* 16 Regional Councils (RC) could be formed as Administrative and Co-ordinating bodies.
- \* If a notional RC is made up of say five component Unitary Councils# (UC), the former could be responsible for strategic planning, the latter could be responsible for service delivery. (#UC =CC).
- \* The RC could be organised like a Secretariat, with an Executive Secretary and support staff responsible for organising meetings and coordinating papers e.g. of the Highways Committees of the five UC's that make up the token Region. All UC Committees could be co-ordinated in this way.
- \* Regional Level – essentially consolidates structures that are already in place and so set-up costs could be moderate.
- \* Is there any reason why a UC member should not exercise his UC voting rights in his City Hall / County Hall in person and exercise RC voting rights in joint live session (video link) with other UC s at their UC Civic Buildings?
- \* Public could still escalate concerns by UC route or MP route as UC /CC could still exist.
- \* Each UC responsible for work delegated by RC, and subject to audit.
- \* Scope for MPs to lobby CC within their region.
- \* Scope for RC to lobby MP within Region.
- \* Voting (like jury service) could be regarded as the act of a citizen performing a duty for the state.

#### Other issues:

- \* Community Planning with partnership working between all agencies (such as health boards, benefits agencies, further and higher education institutions) responsible for public service delivery in an area, could be extended to RC's if consistent with the principle of subsidiarity (Present in Scotland – could be made UK wide?)
- \* UC's provide a wide range of services. Having several "tools in the box" seems appropriate to find the most cost effective solutions. Direct employees, purchase of services from commercial organisations and co-operation with other state agencies or charities seem very appropriate. The presence of smaller numbers of professional buyers/ project managers to oversee work done by third parties is often claimed to be more flexible and scalable than always relying on in-house employees. The purchaser provider model could be regarded as the norm, with private or state owned providers able to tender for work, for long term services or long term projects.
- \* Independent audit, operational and financial, annual and ad-hoc could be regarded as an integral part of the checks and balances of a written constitution. Sanctions could include suspension from post?
- \* There could be convergence in areas such as social welfare, housing benefit, educational standards, medical standards, taxation, health and safety etc. The skewing of tax / expenditure, or benefits /costs in favour of any one of the four home nations could lead to harmful competition and a downward spiral to the long term disadvantage of all.
- \* The current obligations of Unitary Councils could be extended to the regional level, where operational and cost effectiveness might be improved? This could include: education, transport,

planning, fire and public safety, social care, libraries, waste management, trading standards, rubbish collection, recycling, council tax collections, housing and planning applications

\* If all state schools were funded directly from say the regional level, with strong guidelines as to what is expected to be taught, to what standard, with a series of models, templates or guidelines that set the direction but not the practice, then a balance of innovation and basic skill acquisition might be achieved. All schools are part of society and so it could be argued, that this is recognised by local government being part of school governance (perhaps as a member of the school governors).

\* If Health Service trusts were funded directly from say the regional level, with strong guidelines as to what is expected to be done, to what standard, with a series of models, templates or guidelines in place, then in combination, these might set the direction but not the details of medical practice.

\* There are probably a finite number of ways to run a hospital. Regions could work together to establish best management practice at any level. The key word here is co-operation not competition. There are many example of where competition produced results opposite to the ones intended. Competition may have its place, but not applied as an act of faith.

Conclusion:

Come the election in May 2015, a hung parliament may be a beneficial result. If no single party can impose its "world view" on a new UK constitutional settlement, they might just have to talk to each other and agree on some things that are functionally sound even if ideologically suspect to some.

Historically Governments of the left and the right have delivered an indifferent level of service. The 5 year electoral cycle does not provide enough time to test and roll out fundamental changes (British Rail privatisation, Poll Tax, never ending health service reforms, Labour's Super cure all NHS IT system, Border Control, coherent energy policy, defence procurement and so the sorry list goes on.

If government at its various levels allocated funding and delegated delivery to competent managers, be they from the state or private sector, then with sufficient time and appropriate oversight they might deliver better results.