

# An Unequal Kingdom

The Barriers to Federalism in the UK

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## Preface

The constitutional question over Scotland's place within the United Kingdom was not resolved by the results of the 2014 independence referendum. In addition to the ongoing debate about how much power should be delegated to the Scottish Parliament under devolution, at least two political parties in Scotland – the Liberal Democrats and Scottish Labour – currently claim to support a fundamental reform of the United Kingdom from a unitary state of which Scotland is a region into a formal federation of nations. This paper explores what this means in practice and the possible models which could deliver a federal system and discusses the barriers which could make this difficult. It is no longer sufficient to merely advocate federalism in an aspirational sense. The details of plans to achieve this should be laid out before voters.

There are only two principal federal models which could be applied to the UK although there are considerable variations possible within these two models. The first is a **Four Nation Federation (England, Scotland, Wales, Northern Ireland would be the state members)**. The second is a **Three Nation plus English Regional Parliaments Federation (The state members would be Scotland, Wales, Northern Ireland plus a number of English Regional legislatures)**. The following are some of the key questions that must be addressed in assessing the federal options.

1. Which model of federalism do you support?
  - a. Enhanced Devolution ('Devo-More' or 'Devo-Max' but without an English Parliament or a full, written federal constitution).
  - b. Four Nation Federation (each of the four home nations would have its own parliament with a federal parliament which would have either a large built-in majority for England or some form of parliamentary voting which prevented this)
  - c. Three Nation plus English Regional Parliaments Federation (in which England would itself be federalised and the resulting regional-states being given equal power and status as parliaments in Scotland, Wales and Northern Ireland)
2. How much policy power would each state have and would this be asymmetrical – for example would Scotland lose its power to create criminal law or would Yorkshire (in the event of a federated England) have the power to set a different criminal law that Lancashire, or would some hybrid system be created?
3. How much power would each state have over the federal state (which would be subordinate to the other) and would the federal state be directly elected or consist of representatives of the individual state parliaments?
4. If an 'Enhanced Devolution' model is adopted, do you believe this can really be described as federalism and exactly what additional powers would be devolved ('Devo-More' or 'Devo-Max')?
5. If a 'Four Nation Federation' model is adopted, what safeguards would there be against the built-in 'supermajority' that would be enjoyed by England, and/or what safeguards would be imposed to ensure that smaller nations did not continually use veto or other powers to thwart majority opinion in the federal parliament?
6. If any state in the federation expressed a desire to secede, what democratic, legal and political mechanisms would be built into the federal constitution to assist or impede the secession?
7. What path towards the proposed settlement is envisaged? This must take into account the need to achieve full public and political consent in all constituent parts of the prospective federation for the proposals, the process of developing a written constitution to enshrine the settlement which will be ratified by all the component federal states and a plan which explains how the substantial reconfiguration of the British State would be enacted in practice.

## Introduction

The 2014 Scottish independence referendum did not result in Scotland becoming an independent country but neither did it fully or finally resolve Scotland's place within the United Kingdom. The discussion is still ongoing and the state of devolution remains fluid. Even during the 2014 campaign there was a discussion of reforming the UK from a unitary state with devolved regions into a formal federation of the nations comprising it. This policy was primarily promoted by advocates of Scotland remaining part of the UK but were either unhappy with the then present settlement or who thought that many 'soft-Yes' voters could be persuaded by their proposals to vote No.

The Scottish Liberal Democrats produced a commentary paper in 2012 titled "Federalism: The Best Future for Scotland" which advocates their vision of a Federal UK. Shortly before the 2014 referendum, Labour's Gordon Brown made a well-publicised speech which claimed that Scotland voting to remain in the UK would result in a reform of devolution which would amount to "a system of government as close to federalism as you can have in a nation where one part forms 85% of the population".

Since the referendum, little further work or campaigning towards such a 'Federal UK' has been forthcoming. The Scottish Liberal Democrat proposals were supported by the UK Liberal Democrats shortly after the referendum and some mention of delivering Home Rule to each of the nations appeared in their 2015 and 2017 general election manifestos, but has not been prominently advocated for. The Scottish Labour party has now adopted a policy of forming plans for a Federal United Kingdom and the current leader of the party, Richard Leonard, has re-committed to this policy but, as of the time of writing, no details have emerged on their preferred model of federalism nor even of a range of options available to them.

The purpose of this paper is to examine some of the possible options which could result in a country that could be fairly called a Federal United Kingdom and to examine the barriers which may lie in the way of achieving that goal.

## Definition of Terms

In discussions such as this it can be extremely important to define terms tightly and precisely so as to avoid misunderstanding in a realm where terms are often used interchangeably, can carry adverse historical connotations or can otherwise be highly emotive. Terms like "country", "nation", "region" and "state" are also often used interchangeably or can be used with different meanings in different circumstances. But, for example, whilst the

use of the term "region" to mean "a geographical sub-unit of the United Kingdom" may be perfectly legitimate in a purely academic sense if that term is applied to Scotland then it can be seen to be impinging on Scotland's right to describe itself as a country or a nation. For the purposes of this paper, and to provide consistent use throughout it, the following terms will be used as per their definitions laid out below. This should not be taken as an endorsement or denial of any use seen outwith this paper.

**United Kingdom** – (Abbreviated as 'UK') The country known in long form as the United Kingdom of Great Britain and Northern Ireland and which comprises of the nations of England, Scotland, Wales and Northern Ireland.

**Nation** – One of the devolved areas of the UK. Scotland, Wales or Northern Ireland as well as England as a whole.

**Country** – A unitary state, or a federation or confederation of nations, regions or states which is recognised as a member of the United Nations.

**Unitary State** – The country in which the country-level government is supreme. Any power devolved to regions within it is entirely at the country-level government's behest and may be changed or withdrawn without the region's approval.

**Federation** – A country comprised of states. Substantial power lies with these states and the states have formal joint representation which decides policy governing all of the states or the country as a whole. Although changes to state powers cannot be made without the explicit approval of the state or states in question, the fundamental locus of power is still presumed to lie at the country-level and the states are legally subordinate to it.

**Confederation** – Similar to a federation except the locus of power lies at the state level and the country-level government is legally subordinate to the states.

**Region** – A sub-unit of a unitary state.

**State** – A sub-unit of a federation or confederation.

The term 'Home Rule' is often used in this debate: however its use is ill-defined and has been used to cover everything from the package of devolution Scotland gain in 1999 through to full independence. It's current use would generally be used to imply that all matters that would be considered 'home affairs' (everything other than defence and foreign affairs, probably including Sterling as an international currency) would be solely decided by voters and parliaments in the 'home country' concerned. This is closest to the definition of 'Devo-Max'. However, it is equally applicable to a political settlement in which all decisions affecting the nation would be made 'at home' other than those actively chosen to be delegated to a third party (such as through membership of international organisations), which is independence. For this reason of poor definition, the term is not used in this paper.

## The Current State of the Union

Prior to 1998, the United Kingdom was run as a more-or-less centralised unitary state whereby most power above a local council level was exercised directly by the UK Government – albeit with some administrative decentralisation via departments such as the Scottish Office. The results of the devolution referendums in Scotland and Wales in September 1997 and the Good Friday Agreement in April 1998 resulted in a series of measures designed to devolve powers to those areas. Due to the piecemeal nature of these agreements, the unique histories, desires and requirements of the areas in question (particularly in Northern Ireland) as well as other political considerations, the devolution of powers was not conducted in a cohesive manner and – alongside changes and evolutions in the agreements in the two decades since – has resulted in each of these devolved areas and their administrations taking very different forms and being responsible for different baskets of revenue raising powers, responsibilities over expenditure and other legal powers.

Within England there has been some movement towards regional devolution but this has only occurred intermittently. So far it has been restricted to regional mayors and “City Deal” funding projects. A postal ballot referendum on the creation of an elected assembly for the North East region in 2004 was soundly defeated 78% to 22%. This remains to date the only referendum on regional devolution within England and progress towards deals in Lincolnshire, Sheffield, the East of England and elsewhere have recently been met with significant delays.<sup>1,2</sup>

The concept of ‘asymmetrical government’<sup>3</sup> is not necessarily a barrier to competent governance nor even to ‘national unity’ – should such a thing be considered important – and nor is it a concept unique to the United Kingdom as countries such as Canada and Spain also employ a level of legislative and political asymmetry between their states and regions – though both of these countries are also noted for the presence of significant independence movements.

A significant challenge for proponents of macro-devolution, whether in the specific form of federalism, enhanced devolution or some other form, will likely lie in reconciling the different needs and histories of different areas of the United Kingdom within a unifying federal framework.

## Three Potential Models of Federalism

The term ‘Federalism’ is used fairly loosely in the political spheres of Scotland and the UK. Often it is used alongside

the context of delivering more powers to the nations and regions of the UK but, in truth, the term itself merely speaks to the structure of how those powers are distributed rather than the degree to which they are. The concept of Federalism fundamentally differs from the concept of devolution as practised in the UK for the past 20 years.

Under a devolved settlement power fundamentally lies at the country-level (hence the moniker in Scottish politics that “power devolved is power retained”) but may be granted – or withdrawn – at will to lower levels of government such as regions, cities or nations. Whilst language around the ‘permanence’ of regional governments may exist and whilst conventions and traditions may promise that the unilateral re-centralising of power would never actually happen, the right for central government to do so always remains.

In a federal system, by contrast, the relationship between the federal government and the individual states is much more firmly codified – often by way of a written constitution – and any transfer of powers between the states and federation cannot occur without mutual agreement. Of course, this arrangement may bind both ways. Blocking the transfer of powers to a governmental level may be an act of power hoarding just as much as transferring powers away from that level could be. Some federations also invoke language which prevents the ultimate transfer of powers, namely the secession of a state from the federation, either outright or by demanding near-impossible conditions such as agreement of a majority of states in the federation or a referendum of all citizens including those living outside the would-be secessionist state. It has not gone unnoticed that both the Liberal Democrat and Scottish Labour proposals for Federalism include language such as “stabilising” the United Kingdom or, as in the Liberal Democrat case, describing the right to unilateral self-determination as “constitutional nonsense”. Recent events in Catalonia have graphically shown what can happen when legal documents are used as an aegis against democracy and public will rather than acting to support it. However, Brexit has shown that (con)federal constitutions can allow member regions the right to unilaterally withdraw from political unions (in that case, via Article 50 of the Treaty of the European Union) even if the process is politically or technically complex.

If the purpose of Federalism is truly to better distribute power within the UK then the right of members to unilaterally withdraw would be an essential addition to a federal constitution.

Should these issues be adequately resolved, Federalism would remain a broad concept and how it is applied to the United Kingdom open to significant debate. Three options are presented here which illustrate some of the potential results of reforming the UK into a federal structure and as well as to highlight some of the barriers which may prevent it occurring.

## Model 1: Enhanced Devolution - 'Devo-More' or 'Devo-Max'

Since the beginning of devolution there has been a movement towards delivering more powers and responsibilities to the devolved administrations. Proponents for continuing this trend but stopping short of full independence may wish to explore the limits of how this could be done without a fundamental restructuring of the United Kingdom. The Liberal Democrat paper makes clear that one of the largest hurdles to such restructuring is the lack of will for it to occur in England and so until such will exists no serious plan for Federalism could begin to be implemented. However, a greatly enhanced devolution package seems more possible.

The post-referendum Smith Commission resulted in a relatively small package of additional tax powers being devolved to the Scottish Parliament. It still controls only around 32.4% of tax raised within Scotland (approximately £18.78 billion of the £57.95 billion total tax raised). The Liberal Democrat paper discussed devolving a basket of powers which differs only at the margins to that which has been delivered in the years since its publication and their vision of Enhanced Devolution for Scotland would still only allow the Scottish Government to directly raise tax revenue covering 54% of its own devolved spending (or around 35.2% of total revenue) with the short-fall being made up by the continuation of a Block Grant of some form. Key areas of economic policy like the ability to issue bonds to raise capital for investment would remain strictly limited.

The major difference between the current devolution structure and the Liberal Democrat plan ultimately lies in the relationship between England and the UK Parliament. Under this plan, the 'West Lothian Problem' (the fact that Scottish MPs may vote on matters such as English education but cannot vote on Scottish education matters in their own constituencies) would be solved by devolving such issues to some kind of English parliament whilst the UK Parliament would be restricted to voting on federal matters. As stated previously, however, the lack of will for such an English Parliament largely precludes its formation. If the only aspiration for a Federalism plan is to transfer a few more powers to the Scottish Parliament and does not contain a solid and viable option for reform of English politics then it can hardly be called Federalism – merely some form of 'Devo-More'.

One alternative settlement would be to grant nearly full autonomy over all areas of governance within Scotland to the Scottish Parliament except for a few areas such as foreign affairs, defence and appeals to the UK Supreme Court. This 'Devo-Max' option would represent the outer limits of Enhanced Devolution and would be analogous to the 'Dominion' status granted to territories like Canada and Australia in the 20<sup>th</sup> century, the 'Crown Dependency' status

of territories like the Isle of Man or 'Overseas Territories' like Gibraltar. The obvious barrier to this proposal – at least from the perspective of those who do not advocate independence – is that it becomes increasingly difficult to justify the existence of a 'United' Kingdom and from there the transition for Scotland to full independence becomes a matter as straightforward as experienced by Canada, Australia and others.

Even if an extensive Enhanced Devolution package was delivered, the fundamental limits of devolution would remain. The central UK Government would still maintain the right, in principle, to legislate over devolved matters. The Smith Commission recommended that the custom of seeking legislative consent – the Sewel Convention – should be placed on a statutory footing and this recommendation was apparently accepted. Despite this, the right of the UK Government to legislate on devolved matters was invoked in the writing of the EU (Withdrawal) Bill as the statute was determined to only cover 'normal circumstances' which Brexit fell outwith. The only way to avoid this failing would be to put in place constitutional guarantees including allowing Scotland and any other nations or regions granted such status the ability to write their own constitutions which would protect their sovereignty over devolved issues. However, this is almost certainly beyond the scope of Enhanced Devolution given that it would effectively maintain a Unitary State and since it is not governed by a written constitution and is therefore sovereign in all matters by majority vote in the Houses of Parliament, this would probably require a full written constitution for the whole of the UK.

## Model 2: A Four Nation Federation - an Unequal Kingdom

Assuming that political will for English and UK Parliamentary reform can be harnessed, then the path towards Federalism can be opened but there remains barriers to the practicality and feasibility of such a system. For this model it is assumed that a package of powers has been allocated to each of the nations and they each (including England) have a dedicated Parliament and state government to administer those powers. Remaining UK powers would then have to be exercised via an overarching Federal UK Parliament. One potential structure for this would be to convert the present House of Commons (minus the MPs from outside of England) into the English Parliament and then to create a bespoke Federal Parliament or Senate of the Nations.

A question would also arise over whether the state and federal parliaments should be uni- or bi-cameral. At present, the UK has a bi-cameral UK Parliament (The House of Commons and the House of Lords) whilst the devolved

governments are uni-cameral. The USA, by contrast, employs bi-cameral governments at both federal and state levels (with the exception of Nebraska which abolished its lower state legislature in 1936).

However it is done, the size differential between the nations of the UK quickly becomes apparent.

Many federal and confederal countries have to deal with states of varying sizes and when one compares the population of the largest state of the federation with the smallest you can calculate their population ratios as in the table below.

Country	Largest Region/State	Smallest Region/State	Population Ratio
Germany	Nordrhein-Westfalen	Freie Hansestadt Bremen	27:1
United Kingdom	England	Northern Ireland	30:1
United States	California	Wyoming	66:1
Switzerland	Zürich	Appenzell Innerrhoden	90:1
Spain	Andalusia	Melilla	103:1
Russia	Moscow	Nenets Autonomous Okrug	250:1
India	Uttar Pradesh	Sikkim	328:1

By this measure, the UK actually compares relatively favourably with respect to other federations but the crucial difference is that in none of these other federations does the largest state hold an outright majority of the population. As Gordon Brown pointed out shortly before the independence referendum, England makes up approximately 85% of the total population of the UK. This means that in any dispute between England and any of the other nations of the UK – indeed, all of the other nations combined – then a vote based on population which divided on national lines would always act in favour of England. For this reason, a Federal Senate would be best designed so that this population differential is compensated for.

One potential structure for this could be to model the Senate on the structures of the European Union, specifically the European Commission. Each member country appoints one Commissioner to represent their country and thus each member of the EU gets one vote regardless of the size of the country. Many laws are also subject to veto – sometimes by a single vote – which further increases the power of smaller nations. It is the custom of the European Commission that commissioners are appointed by the

member countries and the undemocratic nature of this appointment has been recognised as one cited reason for the UK's impending departure from the EU – although it could be noted that the UK happily appointed its own commissioners and there does not appear to be a legal barrier preventing countries from democratically electing their representatives.

A model which broadly works for 28 members may not work quite so well for just four, however, so a democratically elected Senate consisting of enough senators to adequately represent each nation of the UK may be appropriate.

Again, the disparate size of England should be recognised; a Senate in which 85% of the senators represented English constituencies would suffer the same problems of representation as the UK does under the current framework. One suggestion could be to arrange the ratio of senators so that for every five elected to represent England, two would be elected in each of Scotland, Wales and Northern Ireland. This 5:2:2:2 model would allow the mathematical possibility of England being outvoted by simple majority should a policy be sufficiently tilted in the latter nation's favour at the expense of the others. As with the EU Commission model, national vetoes may also be appropriate in certain circumstances and "super-majorities" (where more than 50%, often 66%, are required to pass a motion) may be appropriate for particularly major issues such as the decision to go to war.

The vulnerability of this model lies primarily in the same vulnerability felt in the EU Parliament where MEPs are more likely to vote on party affiliated

grounds rather than dividing by country lines and whilst the politics of the UK does show distinct division along national grounds (especially in Scotland and Northern Ireland) this could not always be taken for granted. The largest barrier to implementation could be the desirability of such a federal model to England as even though it may enhance English sovereignty over internal issues it serves to dilute that country's power over what would become federal issues (such as trade and defence). There would have to be clear, defined and desirable benefits to the powers of the English state parliament over that which is already present in the House of Commons (especially now with 'English Votes for English Laws' on the statute book). Without these, this model of Federalism is extremely unlikely to find traction in England and therefore will not be passed regardless of the strength of feeling in the other nations.

## Model 3: Three Nation plus English Regional Parliaments Federation

### - a Federal England

A third model of a Federal UK could be constructed which would eliminate the population disparity of the nations of the UK but it would require a much more fundamental restructuring of the make up of the UK. Rather than creating a single English parliament instead a series of regional parliaments would be set up across England. The boundaries of these regions could be drawn based on various criteria (historical boundaries, population parity etc) but for the purposes of this model the boundaries shall be laid out to match those used by the European Union's Nomenclature of Territorial Units for Statistics (NUTS) which is used by UK Government departments such as the Office for National Statistics.

Region	Name	Population (2016)	Population Ratio (compared to SE England)
C	North East England	2,636,848	3.42
D	North West England	7,219,623	1.25
E	Yorkshire and the Humber	5,425,741	1.66
F	East Midlands	4,724,437	1.91
G	West Midlands	5,800,734	1.56
H	East of England	6,130,542	1.47
I	Greater London	8,787,892	1.03
J	South East England	9,026,297	1.00
K	South West England	5,515,953	1.64
L	Wales	3,099,100	2.91
M	Scotland	5,373,000	1.68
N	Northern Ireland	1,851,600	4.87

Under this model, the population disparity between the states becomes a lot more evenly distributed with the largest state (South East England) being only 4.87 times the size of the smallest state (Northern Ireland). It would be much more viable in this case to build a Federal Senate based on an equal or near equal number of senators per state.

Of course, if there is limited appetite for a Federal United Kingdom based on a united England then the idea that England as an entity should be effectively replaced with a federation of its regions is very likely to be considered a price too high just to maintain the concept of the United Kingdom. This plan would also likely require substantial work to be done to prepare each of the English regions for delivery of powers including the setting up of state legislatures. These would not just be regional tiers of local government but would have to be law-making institutions. The cost of the construction and running of these institutions may be significant – if the experiences of the delivery of devolution to Wales and Scotland were repeated the construction costs for each state assembly could be in the region of £100-£500 million for a total build cost on the order of £0.9-£4.5 billion plus additional costs for any other related institutions such as a network of dedicated state civil services. Of course, with spending and investment comes jobs and opportunities. The relocation of key government functions to regions which have experienced substantial and sustained levels of underinvestment under the current political settlement may be a compelling reason to demand change.

## The Power of States

The creation of a federal constitution for the UK in itself tells us nothing about the power of states. And how powerful states are needs to be considered in two ways – the power they have over policy in their own territory and the power they have over the federal government as a whole (policy power and federal power). It is possible to have a highly decentralised structure which was weak in its powers and subordinate to a dominant federal government.

First, policy power. A highly-federalised solution could in theory still retain the vast bulk of policy powers at the federal level and devolve comparatively little power to each of the states. This would also revolve around whether there was a 'reserved' or 'devolved' approach taken to legislation – would powers be reserved at the federal level (with states having the right to enact any power not reserved as in the Scottish devolution settlement) or would a specified range of powers be allocated to states? If a three

nation plus English regional parliaments federal model was adopted there might well be pressure to retain key policy areas such as law and order, education, health and so on at the federal level. This is complicated because that would either involve a federal state legislating for only part of its territory (a return to the 'English votes for English laws' problem) or the parts of the UK currently with devolved parliaments losing those powers. Other solutions might involve an extra layer of government for England – the individual states of a federalised England could create a formal or (in theory) informal English parliament where they agreed to pool policy-making in these areas but for England only – or a system of explicitly-designed asymmetrical power which would be possible but complicated and potentially messy.

Second, federal power. Just as much as policy power, the extent to which the federal government is subject to the will of its component states is not inherently defined by a move to federalism. As has been explained above, the possible power relations between states and a federation they form form a wide spectrum. At one end the federal government can be directly elected and have a constitutional right to overrule any decision by any state, including decisions which impact wholly and exclusively inside the territory of that state. At the other end, the federal parliament can be made up by representatives of each of the individual states who would then have ultimate power over the federal parliament – including the power to de-federate (effectively become independent). In between these are options including forms of majority voting or constitutional safeguards (any form of federation would require a full written constitution and a legal system to arbitrate constitutional conflict).

It is not enough to say that a federation would decentralise power; that is not inherently true. It is possible to have a highly centralised federation in which states have only limited power and rights, one in which they have high degrees of power over their own territorial issues but little power over the federal government, the opposite in which they have little territorial power but a high degree of control over the federal government or a complex range of other permutations of these issues. How much a federal solution meets the desire for decentralised power rests very largely on these decisions so they must be spelled out.

## The Path to Federalism

If and when an agreement was made to fundamentally overhaul the political arrangements of the UK into a federal structure there would have to be a discussion about how the agreement would be ratified. Almost inevitably, this would require some kind of public referendum but even in this, the population disparity within the UK reveals itself. The results of the EU referendum were reasonably split along national lines with Scottish voters, particularly, appearing as an outlier in the voting statistics – Scottish voters were significantly more likely to vote Remain than English voters

even when accounting for factors such as income, age and other relevant comparators and every local authority of Scotland returned a majority result for Remain – but as the EU referendum was organised as a single referendum across the entire UK then this outlying result has been portrayed by some as irrelevant. The dissenting view of the Scottish Government towards this portrayal has, naturally, led to political tension throughout the Brexit process.

Efforts were made by the Scottish Government prior to the EU referendum to structure the EU referendum such that each of the four nations were recognised as distinct entities and therefore the result would require a 'double-majority' for Leave – a majority for Leave across the whole population plus a majority for Leave in each of the four nations – to trigger the proposition. The results of the 2016 EU referendum would have failed this second test due to the majority of Remain votes within Scotland and Northern Ireland.

The arguments against such a double-majority may well apply to a situation where the entire UK would be withdrawing from a treaty with an external organisation but may not similarly apply for an internal re-arrangement of political structures. Just as it would be unfair to force England to change its political settlement against its collective will just to 'appease' sentiment in, say, Scotland, the reverse would also be true and if England wanted to rearrange the UK into a federal structure and Scotland, Wales and/or Northern Ireland did not, it would be similarly unfair to force it upon those nations. In the Federalism model where England is maintained as a single entity then there would certainly be a case for a double-majority referendum.

In the Federalism model involving a disaggregated England, the case is also strong, if not stronger, for the referendum to achieve a majority referendum result in each of the proposed states although under this model there may be issues whereby all of the proposed states bar one or two are strongly in favour of Federalism but those 'holdouts' are effectively able to block the change – possibly in the hope of extracting political concessions. The process to amend the US Constitution may provide a model to solve this problem. Under that process, a proposed amendment must be ratified by three quarters of the states (38 out of the present 50 states) at which point it is adopted. A similar method could be used in a UK Federalisation referendum where a popular majority must be coupled with local majorities in three quarters (or a similarly agreed threshold) of the proposed states (for example, eight of the 12 regions suggested above).

## Conclusion

There may well be advantages to the smaller nations of the United Kingdom to transition from devolution to federalism. The fundamental vulnerability of devolution – the ability for the country-level government to withdraw powers without consent – is a source of significant tension within UK politics (especially as wrangling over Brexit reaches a crescendo) and so legally formalising the roles of each level of government and protecting them via a formal, written constitution would be a positive step. Constitutions do, of course, have a far greater purpose than just regulating inter-governmental relations and the distribution of powers. They are, fundamentally, identity-declaring documents and as such may also help re-found the UK along more inclusive and more democratic lines.

However, if the purpose of Federalism is merely to provide a veneer over a minor change to Scottish politics and to present that as an 'alternative' to independence then it is likely doomed to failure. Similarly, if the purpose is to install a constitution in such a way as to actively prevent future democratic calls for independence then it will be setting up the UK for civil tensions possibly such as those witnessed in Catalonia in recent years. Again, the purpose of laws and constitutions is to support democracy and the sovereignty of citizens, not to protect states and governments from them.

Finally, whilst there may be advantages to Federalism for Scotland, Wales and/or Northern Ireland these advantages are less clear in the case of England which may be asked to make significant concessions – up to and including the effective legal dissolution of that nation as an entity – in order to accommodate them (thought there is a strong case to be made that a much more decentralised England is a positive direction for much of the country to take). Before any attempt to 'sell' the idea of Federalism to the smaller nations of the UK can even begin, there must be a desire from England for this to occur. Until and unless that desire demonstrably manifests then any attempt to convince Scottish voters that there is a future inside a Federal United Kingdom as an alternative to either the status quo or to independence can be dismissed as a vacuous policy without hope of ever being implemented.

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