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It's time for a Balance of Competences Review of the UK



Scotland's vote to remain within the UK has triggered a pressing constitutional debate about the allocation of powers and competences in the UK. Meanwhile, the UK government has been busy reviewing the balance of competences of the EU.



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*With attention now on the imbalances and inconsistencies in the distribution of competences within the UK, the recent EU review might offer lessons for approaching the UK's constitutional conundrum, writes **Tim Oliver**.*

Since July 2012 the UK government has been undertaking an audacious review into UK-EU relations called the '**Review of the Balance of Competences**'. Driven by a belief, especially within the Conservative Party, that the EU has taken too much power (to simplify the more technical term of 'competences') from the UK, the review set out to test this claim and publish its findings in 32 evidence based sectoral reports. By doing so the review provides evidence for a bigger political discussion that will follow it, and as such is noted intended to reach any clear political decisions itself. Those political decisions are likely to feed into whether to move forward in a renegotiation of the UK's membership of

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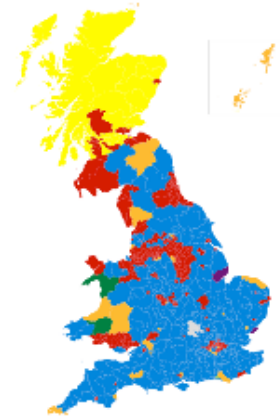
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the EU, something that could then be followed by an in-out referendum.

The constitutional distribution of powers within the UK – whether to areas such as Scotland or to local government – has been the subject of any number of reports and inquiries. Today, thanks to the Scottish referendum, the need to address the issue is more real than ever before. Indeed, how the UK approaches the issue is likely to either make or break it. This has led to various calls for constitutional conventions and Royal commissions. If the UK government is prepared to invest a great deal of time and effort into the matter of the EU's balance of competences, should it not do the same for the UK? As historian Timothy Garton-Ash argued in the [Guardian](#): "In what rational universe can [the EU's balance of competences] be separated from determining the balance of competences inside the UK?" Could then a review of the balance of competences of the UK be undertaken? Does the EU review offer lessons or even perhaps a model – if the time is available – to finding a way to rebalance and sort the current constitutional mess the UK is in?

The Imbalanced Union

The list of problems with the UK's internal balance of powers is a long and familiar one, one the debate in Scotland has once again thrown a light on. Devolution has been focused on certain areas such as Scotland and Wales, allowing them to develop as more distinct political spaces within the UK, building on existing differences that pre-date devolution. While this is to be welcomed as a move away from the over-concentration of power in Westminster, the lack of any clearly defined UK-wide agendas in health or transport means these areas can seem increasingly detached from the UK. Devolving further powers, as promised in a variety of ways by the main UK parties during the Scottish referendum debate, could form part of a solution to the flawed setup whereby Scotland spends money it has no responsibility for raising. But it then leaves open the problem of what it is that Westminster does for Scotland beyond foreign, defence and some tax and macroeconomic policies. Then there is the West Lothian question of why Scottish MPs can vote on matters that pertain to England while English MPs cannot vote on similar matters for Scotland as they have been devolved to the Scottish Parliament. This all adds to the impression that there is little strategic sense of how the UK as a whole is or should be changing together constitutionally.



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Even if the Scots had voted to leave, the imbalances within the remaining UK would not have gone away. Questions already exist about the voting rights of Welsh and Northern Ireland MPs, and the dominance of Greater London over the rest of the UK is an underlying theme the management of which is arguably the most demanding challenge of all. The failure of Labour's half-hearted attempt at English regionalism in the 2004 North East referendum has stalled further efforts at devolution within England. London's place in the UK is often crudely taken to mean the government in Whitehall or the political elite in Westminster. This is an unfair description of Britain's and the EU's biggest city, the home to more people than live in Scotland and Wales combined, and a region with its own political institutions such as the Mayor, London Assembly, and 'the City.' Attempts to fill out the incomplete devolution settlement by granting further powers – perhaps even **fully devolved powers** – to London would also lead to questions about whether London MPs should be barred from voting on non-London English matters. Not that 'English laws' themselves are that clearly discernable, as the **McKay Commission** found. Proposals for an English Parliament immediately run into questions surrounding the balance of competences: what powers and competences should rest with it, which with local or regional government, and which at UK level.

Greater London's own current political and administrative setup raises questions about the rather pathetic, emaciated state of local government, especially in England. As the **London Finance Commission** noted, as a proportion of GDP Canada's ratio of local and regional spending is nine times higher than that in the UK. In France the ratio is nearly three times greater. On everything from housing, tube lines, planning and schools, Whitehall and Westminster – and especially HM Treasury – call the shots in England, with knock-on effects for the other parts of the UK thanks to the way money is allocated. With local councillors largely powerless, and few people in England with access to any other level of representation, MPs are overwhelmed with local matters. Meanwhile the UK executive that MPs are sent to Westminster to hold to account goes about its business, albeit one where a centralised Whitehall itself is overloaded with work.

This growing inability to offer a UK-wide policy agenda is not a mere dry, technical issue. It means the UK can lack some common political themes or mechanisms to manage relation between its different parts. The United Kingdom is there to serve a purpose: for most UK citizens that purpose will be unclear if Westminster lacks any means of doing anything



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or behaving as a UK-wide government. The imbalances are felt even in foreign policy, one area Westminster retains powers. A study by the IPPR into **Englishness** found a strong link between Euroscepticism and English frustration at the imbalanced constitutional status of the UK.

A Balance of Competences Review of the UK?

Solving these imbalances will not be easy. As mentioned, there have been a large number of detailed and insightful reports, each putting forward proposals. There have been repeated calls for constitutional conventions, Royal Commissions or some meeting of representatives from the UK's various parliaments to hammer out a deal. Whatever is chosen, a means will need to be found to provide an evidence based assessment of the current distribution of powers. The UK Government's review of the EU's competences offers some lessons, but nine points need to be taken into account.

First, while the EU review is a complex one, it is made more straightforward thanks to the EU's competences being set out in its treaties. These treaties provide a constitutional map for the EU that the UK lacks with its uncodified constitution. The EU's more limited competences also mean the review does not really have to tackle the thorny issue of tax raising powers and allocation of spending, something HM Treasury may be the most unwilling to see change. It has also not been a speedy one, the review having started in July 2012 and expected to conclude in the autumn of 2014. While a UK review could be more compact, we should be under no illusions that the scale would be much larger.

Second, would a UK review be about the effectiveness or the legitimacy of where powers should reside? When the initial findings of the EU review pointed to a balance that is about right for practical and administrative reasons, the findings were dismissed by Eurosceptics as irrelevant to the bigger question of whether they are legitimate.

Third, the EU review works on the assumption that subsidiarity means a competence should rest with Westminster unless it is shown to be necessary that it rests with the EU. Could a UK review take a position that upholds the idea of parliamentary sovereignty whereby all powers rest with Westminster unless proved to be necessarily otherwise? Would Westminster be prepared to consider the idea of sharing powers? The



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EU review has served as a reminder that Westminster has something of a zero-sum, majoritarian mentality about power: you devolve power within the UK, not share them; you sign over and can later, if necessary, repatriate powers from the EU, not pool them.

Fourth, even if Westminster is willing to share, as the British government may find with the EU, rebalancing competences could require some powers to be taken back while others are given. How willing would Westminster be to devolve further powers, and how willing would areas such as Scotland be to return some powers to Westminster if this was deemed necessary for an effectively functioning UK-wide system? How might this conflict with long-standing areas of devolution in Scotland, such as education and law where administrative devolution existed long before political devolution in 1999 (and some areas predate the union of 1707)? Some in Scotland would be as unwilling to return some powers to Westminster as some in Westminster would be to hand over powers to the EU, even if in both cases evidence was produced that showed this could improve the balance of competences and make for more effective governance.

Fifth, the balance of EU competences could change in the future, necessitating another review. This is hardly unusual. Federal systems such as Germany and the USA have ongoing debates and mechanisms for reviewing what competences should lie where. The UK would need to move from a situation where it has these debates in Scotland or Greater London to one where they are UK-wide and become a standard constitutional procedure.

Sixth, who is to undertake the review and who is it to serve? The EU review is overseen by the Cabinet Office and the FCO and implemented by individual Whitehall departments. It is unlikely a UK government led review would be seen as impartial by some in the UK. The EU review itself has run into this problem. The British government has been keen to present the review as being about EU reform, and not simply about the UK. Despite this it has been spurned by other EU states who view it as being about the UK's national interests. Even in the UK, Eurosceptics have dismissed it as a government whitewash.

Seventh, who might dominate and shape the work of a UK review? With the EU review a large amount of evidence and opinions have so far been received from businesses, academics, NGOs, charities, lobby groups,

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lawyers, political activists, political parties, local and devolved government, a few foreign governments and organisations, and some individual UK citizens. It may end up being viewed as one beholden to well-organised groups such as businesses or political activists. The same could happen in a UK review, where some well organised and resourced areas, such as Scotland or London, could dominate the findings.

Eighth, the EU review has been driven in part by growing political pressure from the emergence of UKIP. What political backing or campaigns would push a UK review? So far most such campaigns have been geographically focused on Scotland, Wales, London, and to a lesser and more vague way in England. Thanks to the Scottish referendum there might now be growing pressure for a constitutional convention, but this has yet to grab much public attention or backing although this could emerge.

Ninth, an emerging problem with the EU review is that it shows a disjuncture between popular feelings about what the EU does and what it actually does. The EU review can provide evidence to help counter such views, but the review cannot do this on its own. A UK review could find that some of the distribution of competences within the UK is contrary to popular opinion or opinions held in certain local area or regions. Changing that opinion will then be for whatever follows the review. How this is to be done would be for whatever that is, for example would a UK balance of competences review serve a constitutional convention that is then followed by a referendum? Or would it be for a general election to settle? The referendum could fail or deepen divisions if an area of the UK rejected it. In a UK review this could become more likely if the review was seen as unfair. Getting the balance right from the start will be important, but this could run into a problem of appearing to prejudice the impartiality of a review if it is intended to gather evidence.

A Rebalanced Union?

We should be under no illusions that the UK faces a series of growing problems about its internal distribution of powers. The UK may move towards a federal union, or continue its current quasi-federal arrangements, become a confederation, or perhaps outline a series of arrangements guaranteeing some form of UK-wide commonwealth. Whatever is the end result, a way will need to be found to review and report on the current distribution of competences. While the issue of the

EU is important, obsessions about the UK becoming a part of a federal Europe too easily distract from the need to think more carefully about the UK's own internal balance of competences. The current EU review shows how difficult a similar review – or indeed, any form or review – of the UK would be.

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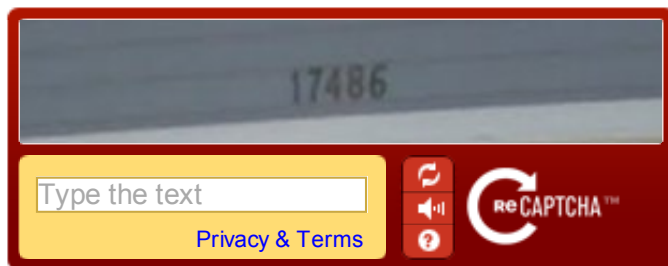
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