

The UK is at a constitutional crossroads and major change is needed if it is to work effectively

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By Democratic Audit UK

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*The Bingham Centre for the Rule of Law undertook a major Review of the implications of devolution as it is developing for the UK as a whole. Here, **Alan Trench** summarises the main findings of the report, and highlights its specific proposals for a Charter of the Union, a reformed system of funding, and parliamentary reform in Westminster.*



Bute House (Credit: Credit: [Kim Traynor, CC BY SA 3.0](#))

The impact of the Scottish independence referendum has been wide-ranging. It raises a number of questions about how the UK works as a whole and its territorial constitution, as well as ones about Scotland. But for all the importance and urgency of these issues, they have not yet been subject to any wide-ranging or sustained scrutiny. A new report from the Bingham Centre for the Rule of Law, available [here](#), seeks to change that and look at what issues the UK as a whole will need to address in the coming months and years. The review commission has been chaired by Sir Jeffrey Jowell QC, and its membership and remit are set out [here](#).

The Commission's starting point was to consider the implications of the piecemeal, ad hoc approach to devolution taken so far. Its view is that this has reached the end of its road. The knock-on effects of the [Smith Commission proposals for Scotland](#) mean that this now creates serious constitutional difficulties beyond Scotland. A more systematic view, considering the UK as a whole, is badly needed.

The first big recommendation to address that is a *Charter of the Union*, to be passed as a Westminster statute with consent from the devolved legislatures, and setting out key principles for the working of a devolved union. These draw on what already applies – they include such principles as respect for democracy, the rule of law, autonomy of each government and comity and respect for each other in their dealings with each other. Subsidiarity and social solidarity are also key principles for the Charter of the Union.

The Charter would accompany the specific devolution statutes for Scotland, Wales and Northern Ireland, so they would need to be construed in accordance with it and its principles would govern further considerations of devolution

– and indeed changes at UK level. It would therefore set out a clearer constitutional framework for the UK as a whole, rather than the current ad hoc approach to three distinct arrangements plus an evolving pattern for England. This might be a staging-post to a written constitution, but it would certainly put the UK's territorial constitution at the forefront of its constitutional debates over the coming years.

The second major recommendation relates to funding arrangements. The review is clear that the Barnett formula has had its day. It does not deliver equity between the various parts of the UK. It does result in a number of unintended policy spillovers between England and the devolved tier of government, and it gives the Treasury a huge degree of control and scope to make subjective judgements about how the UK's finances as a whole work. These are incompatible with the sort of devolved Union that the UK has become, and will only become worse. The block grant will become increasingly subjective as adjustments are made to allow for devolved tax capacity, to pay for devolved welfare functions in Scotland, and by application of the 'no detriment' rule intended to help separate tax policy decisions by both devolved and UK governments (both the subject of [forthright criticism by the Scottish Parliament's Devolution \(Further Powers\) Committee](#)). This 'multiple black box' approach will become a source of nothing but disagreement and intergovernmental tension.

The Commission's proposals entail reform of the UK's devolution finance arrangements, of the easy parts as soon as practicable and of the more difficult ones over time. The machinery needs an independent, impartial body to advise on financial matters and calculations. There also needs to be an effective way of resolving disagreements and disputes when they arise, rather than ones that leave the initiative in the hands of the UK Government as at present. And the block grant arrangements need to be put on a statutory basis rather than resting on a [Treasury 'Statement of Funding Policy'](#), and be subject to external scrutiny and audit

Linked to this is the need for a wider debate about welfare and the Union; how much the Union is responsible for delivering social solidarity and how, and the ways this relates to the arrangements for funding devolution. This political choice has such wide-reaching effects it needs to be explicitly debated, not implied by other decisions.

The third major recommendation relates to 'English votes for English laws'. The report supports the principle that bills or provisions which satisfy the [McKay Commission's test](#) of having a 'separate and distinct effect' for England should be subject to consideration by English MPs alone, within the House of Commons. The problem will come with identifying what these bills are. The government of the day may have a view about this, but ultimately deciding this will have to be a job for someone with authority and expertise or access to it, so probably the Commons Speaker. It will need to take into account not only the policy implications of a decision about health, education or policing, but also the financial implications. This will be tricky, and is an argument for both disentangling devolved and non-devolved finances and for separating the way finances and policy are considered within Parliament.

The fourth major set of recommendations relate to the UK Government, and particularly Whitehall. Whitehall needs to pay much more attention to devolution concerns; it needs to ensure that the machinery of intergovernmental co-ordination actually works; and it needs to reinforce ministerial capacity. The last is a strong reason for a single Secretary of State for the Nations and Regions, or for the Union. The absence of an effective overview at ministerial level has made the disjointed structure of the UK much worse. Without much greater care about what devolution means, and the relationship between devolved and non-devolved functions, it will be impossible to distinguish between devolved and non-devolved financial matters or between legislation that has a 'separate and distinct' effect for England and that which does not. Treating devolution as some sort of add-on or variation from an English 'norm' has also had its day.

In September 2014, Scottish voters chose to stay in a reformed Union rather than leave it. There is strong public support for greater self-government in Wales and England as well. Northern Ireland, as part of the Union, needs and deserves a system that works effectively. The Commission's proposals are designed to lay the groundwork for a union that delivers on those demands.

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***Alan Trench** has worked at the Constitution Unit at UCL and the Universities of Edinburgh and Ulster, and advised numerous bodies on devolution issues. He was adviser to the Jowell Commission.*

