

UNITED KINGDOM

Expert

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I. GENERAL QUESTIONS

1. How is the federation formally called (regional, federal state, other...)?

The formal name is the United Kingdom of Great Britain and Northern Ireland.

2. Since when has the power been decentralized in your federation? Was the decentralization established in its origins or in a later time?

The only formal decentralisation to meso-level government since 1800, save for Northern Ireland's fifty years of devolution, was in 1997-1998 when devolution created autonomous governments in Northern Ireland, Scotland and Wales.

3. Has decentralization been formally abandoned or practically inoperative in any historical phase?

Arguably, decentralisation was abandoned in the sixteenth century (when Wales' separate status was extinguished), 1707 (when Scotland and England, which already shared a monarch, united their parliaments), and 1800 (when the Irish parliament was united with the UK parliament). In more recent times there has been no regional decentralisation to abolish in Great Britain. Northern Ireland had a decentralised government from the 1920s to 1972, when its government was suspended and Northern Ireland subjected to "direct rule" from London on account of its social problems and civil war.

4. Which are the deep reasons in the adoption of a politically decentralized system?

The deep reasons for the adoption of a politically decentralised system vary by devolved country. In Scotland they are another chapter in the story of Scottish civil society—its strong web of regional organisations—and their effort to maintain their autonomy and environmental stability through autonomist political activity. In Wales the story is the same but with a much weaker Welsh civil society; in many ways Welsh devolution happened because it would be unacceptable to the Welsh political elites to not have a similar status to Scotland. In Northern Ireland it is part of a quasi-confederal solution intended to resolve its conflict over whether it should be part of the UK or Republic of Ireland. England, lacking autonomous regional civil societies, has only a weak regionalist movement (located, tellingly, in the North—far away from the social and economic influence of London).

5. Could you point out the main phases of the system and the main characteristics?

Until the 1980s the civil societies of Scotland and Wales were afforded a high degree of autonomy by the central state; social policy, industrial development and the welfare state were all administered by territorial parts of the central state called the Scottish Office and Welsh Office; this guaranteed regional civil societies autonomy and stability. The 1960s and 1970s were times of great social change in Scotland and Wales; as a consequence nationalist, separatist, parties were able to make gains (Plaid Cymru in Wales and the Scottish National Party, SNP, in Scotland). This led the incumbent Labour government to hold referenda in 1979 on devolution in order to stave off the nationalist parties; with lukewarm support or opposition from regional organisations they both failed. From 1979, however, the Conservative governments were seen as violating the autonomy of Scottish and Welsh policy and civil society, and enacting policies disagreeable to many voters and elites in Scotland and Wales, and thus there was much broader-based support for devolution by 1997-1998 when the Labour government was compelled to introduce it.

6. How many territories or main territorial communities compose the federation? Do they all have the same nature (for instance, states) or do they have different nature and position (for

example, states, federal capital, colonial lands, communities with a specific regime of autonomy)?

The United Kingdom has four main components (Northern Ireland, Scotland, Wales, and England, the latter directly ruled by Parliament). It also has many smaller units attached; in Europe these include autonomous Gibraltar and the Channel Islands and the Isle of Man (which shares a monarch but not a parliament). There are also possessions in other continents that are self-governing, most of them very small, as well as some directly ruled territories outside Europe, which mostly have no population worth mentioning. Legally, no territorial subunit constitutes part of the UK; the only sovereign, entrenched part of the UK state is the Westminster Parliament.

7. Do they have singular features (for historical, linguistic, geographical, political, legal or economical reasons)? Do these singular features have political or legal consequences? In other words, how have the differences between the main territorial communities been approached from the perspective of uniformity/diversity or asymmetry/symmetry?

The UK has extremely asymmetric devolution and no two autonomous regions have the same legal regime; each is constituted by its own legislation in the Westminster Parliament or special agreements in odd cases such as the Isle of Man. This reflects basic social differences (i.e. Scotland has a highly developed civil society and sought a high degree of autonomy; the English regions do not have meaningful civil societies and have not mounted strong campaigns for high levels of autonomy). Thus, devolution is about pragmatic responses to social differences, most of them on the periphery—England, with approximately 85% of the UK population, has no government or regions of its own although there might be referenda on creating as many as three English regions within the next 2 years.

II. CONSTITUTIONAL LAW

1. Do you have a written Federal Constitution? What is the procedure for its elaboration, ratification and amendment? To what extent can states participate in the process of elaboration, ratification, or constitutional amendment? Which have been the most important amendments or the main constitutional phases until now?

There is no written constitution for the UK. Statute laws and informal “conventions” can be agreed to have status as “constitutional” when they are seen by lawyers as constituting essential elements of the polity and by all actors as being reasonably difficult to change. Thus the Scotland Act, creating the Scottish Parliament, is “constitutional” and politically difficult to change although formally it is one more Westminster statute like the others. Sovereignty in the UK lies wholly with the “Queen in Parliament,” which means the Westminster Parliament, and all constitutional law in written form is made up of Westminster statutes. That means that no other government in the UK can formally participate in, influence, or veto constitutional law since all other government in the UK are in legal theory creatures of the Westminster Parliament (and in Northern Ireland Westminster did indeed abolish a subunit, unilaterally, and has more recently suspended the devolved government).

2. Do you have any complementary constitutional federal rules? If so, which are the most important? Are "constitutional conventions", namely, unwritten binding agreements or rules of conduct, recognized in your system? Could you mention the most important?

The recent nature of devolution to Scotland and Wales—and the recent and intermittent nature of devolution in Northern Ireland—means that it is still difficult to tell what forms of intergovernment agreement or convention will matter most. Precedents and conventions are being established ad hoc; most participants agree that the initial formal documents (such as “Memoranda of Understanding” between devolved governments and UK departments) been only a framework for evolving procedures.

- 3. Are there any written state constitutions? What is the procedure for its elaboration, ratification and amendment? To what extent can the federation intervene in these procedures? Could any federal organism provisionally suspend some of their provisions? Are state constitutions bound by federal rules other than the Federal Constitution? If so, which are they?**

There are written state constitutions only to the extent to that Westminster Acts constituting Northern Ireland, Scotland, and Wales, while giving them great policy autonomy, tightly regulate their structure and process (such as by setting the number of members of their assemblies/legislatures). Thus Westminster statutes fulfil the roles of state constitutions. Again, governments in Northern Ireland, Scotland, and Wales exist only as creations of Westminster and could theoretically be eliminated again by a majority vote in Westminster. The smaller areas—Man and the Channel Islands—are internally governed by a similar mixture of conventions and law (which they set) and deal with the Westminster government on most external and policy matters.

III. CONTENTS OF THE FEDERAL CONSTITUTION. DOES THE FEDERAL CONSTITUTION:

- 1. expressly recognize federalism or political decentralization as a constitutional principle or value?**

There is no federal constitution but the Scotland and Wales Acts are seen as “constitutional” in the British legal tradition. The status of the Acts constituting Northern Ireland, as they can so clearly be suspended or revoked, are constitutional but easier to amend.

- 2. design a map of the territorial organization? In other words, does the Federal Constitution identify or enumerate the territories and/or the communities that conform the federation?**

The Scotland and Wales Acts define Scotland and Wales as does the Northern Ireland legislation.

- 3. enshrine the autonomy of the states? If so, in which way?**

All bodies in the UK—including, arguably, the monarchy—are creatures of the Westminster Parliament. When the Westminster Parliament promises them autonomy and continued existence, it is only making a promise to bind itself in the future.

- 4. recognize states or main territorial communities the capacity to federate among them? If so, can they establish links or celebrate conventions among them without the participation of the federation?**

Technically, this question cannot be answered in the UK constitutional tradition; the “sovereignty of Parliament” (i.e. Westminster) cannot be shared. Devolution and even EU membership is technically just powers delegated from Parliament.

- 5. fully define the whole system of decentralization, or is this system thought to be developed to a great extent by future federal provisions? If so, which are they?**

The Scotland Act specifies central state powers and leaves any other powers to Scotland (thus, it enumerates three small powers in health care; all other health powers are assumed to be Scottish). The Welsh legislation is much more tightly written; the Northern Ireland Act is in the middle. As individual statutes, none of these are connected; the eventual statute creating English regions will not technically be connected to them except insofar as it is seen as constitutional. In other words, there is no barrier to change since it is all just Westminster statutes.

6. allow the exercise of the right to self-determination or the separation of states or other territories?

There is no written document in which such a right could be enshrined, although UK governments for three decades have repeatedly stated that they accept the right of Northern Ireland to self-determination.

IV. INSTITUTIONAL ISSUES

1. Do states participate in the election, appointment or cessation of the federation's chief? Is there any other relationship between this figure and states or main territorial communities? Which one?

The Prime Minister is theoretically chosen by the queen but really is chosen by Westminster Members of Parliament. Devolved governments have no role.

2. Is there any Senate or second legislative assembly that represents the states? If so, does it exercise its representative role effectively? Why? What functions does the Constitution attribute to this legislative assembly? How are states represented in this chamber? Do they have the same kind of representation on the basis of the number of votes or seats? Does any state have a special position in this chamber (for instance, exclusive initiative or veto prerogatives, etc.)? How representatives are organized in this second chamber, according to their territorial origin or to their political groups?

The upper house—the House of Lords—does not represent any territorial circumscription.

3. Do states have legislative initiative over federal subject matters? Is their consent required for the enactment of certain federal acts? In other words, do they have a veto? If so, what kind of veto?

Northern Ireland, Scotland, and Wales all have legal remedies under public law if their competencies or powers as defined in their constitutive Acts (and subsequent ones) are violated by the central state without Westminster legislation. They have no formal influence over Westminster legislation.

4. Is there any neutral judicial court (Constitutional Court, Supreme Court, etc.) that protects the allocation of powers between the federation and the states? Do states participate in the process of designation of its members? How do you assess the influence of this court upon the current system of political decentralization? Broadly speaking, could you tell whether its case law has been most favorable to the interests of the federation or the states? Are there any subject matters or historical phases in which this phenomenon occurred? Can ordinary lower courts interfere in conflicts of powers between the federation and the states?

There is no neutral court; the Judicial Committee of the Privy Council resolves the conflicts (which have been few and brought by third parties).

5. Which legal mechanisms do the federation and the states have to protect their powers? Are they recognized only against legislative acts, or against regulations and administrative decisions or omissions as well? Could you tell whether the safeguards and procedural position of the federation and the states are symmetrical? In other words, can the federation challenge state acts before a court? And vice-versa? Has the federation a veto against state legislative acts, regulations or decisions? And the states against the federation? Can a state bring a conflict of powers against another state before a court? In each state, which is the legitimate organism –legislative, executive, etc.- to bring judicial actions to protect state powers? Can local entities or municipalities bring judicial actions to protect their autonomy against federal or state acts or rules? Are there any other institutions or individuals

legitimate to challenge federal or state legislative acts, regulations, rules or decisions on the basis of a conflict of powers?

Assuming that the basic devolution legislation is fully intact—which is the only reasonable assumption, given its political strength and constitutional status—Scotland and Wales are well-protected. In Scotland the central state must be acting within its defined competencies in the Scotland Act if it is to enact a policy in Scotland. In Wales the legislation is more complicated since some classes of all Welsh legislation are reserved to Westminster (“secondary,” implementing, legislation is Welsh while “primary” statute law is Westminster); Westminster law since the start-up of devolution in Wales has usually expanded Welsh powers. Once Westminster legislation protects a devolved competency, only more Westminster legislation can take it away and any court can enforce the protection of the devolved government. Standing to bring cases is extensive and there is no meaningful legal inbuilt advantage to Westminster.

6. Who is in charge of the official appointment of the main state authorities (the chief of the state, government, parliament or legislative assembly, judicial power of the state, etc.)? Does the federation intervene in the process of appointment?

There is no formal, and very little or no informal, say for Northern Ireland, Scotland, Wales and the smaller bodies like Man in the appointment of Westminster governments or the judiciary (in the legal system shared by England and Wales, and in the separate system in Scotland, the judiciary effectively appoints itself). Government boards charged with tasks such as running waterways or social security benefits are appointed by the minister of the government on which they depend (i.e. the UK-wide Secretary of State for Work and Pensions appoints the board of the Benefits Agency, while the Scottish Minister of Health appoints the boards of the local health boards).

7. Does the judicial power follow the allocation of powers? In other words, are there federal and state courts with jurisdiction to solve federal and state cases respectively? Regarding state courts, is the appointment of judges, magistrates and administrative staff a state power? Do states enjoy legislative power to regulate these issues? Is there any body of self-government of the judicial power? If so, which is its composition? What functions does it have? Who is responsible for the provision of material resources to the administration of justice (federation or states)? Which are the criteria for the allocation of resources? Can federal courts review state court's decisions? In what circumstances?

Scotland has always had its own legal system; by a number of odd and unexpected routes only since devolution has it been possible to appeal a Scottish case to any judges in England (the Privy Council). Scotland's judges are quite autonomous from politics. There is strong influence in England and Wales of the Lord Chancellor, a high-ranking judge appointed to the Government by the Prime Minister, who appoints judges after a selection process where the judicial profession has a great deal of influence.

8. Are there others mechanisms for state participation in federal institutions or functions? Do states participate or are represented in relatively autonomous federal organisms, regarding, for instance, citizen's rights or intervention in the economy (independent agencies with regulative, financial and arbitration powers, etc.)?

Informally there is a great deal of co-ordination—such as Scotland playing a major role in relevant EU policy formulation. Formally, the Memoranda of Understanding emphasise co-ordination, co-operation, and confidentiality between the administrations; it would be strange to expect anything else of the UK civil service.

9. Can states freely convoke a referendum regarding political or legal measures? Are there any constraints? In other words, does the federation have any power over this field?

There is no explicit power for Northern Ireland, Scotland, or Wales to hold a referendum, but no obstacle either. Westminster can hold any referendum it wants to legislate.

10. Is there any pro-state provision concerning symbolic issues (flags, protocol, languages, etc.)?

Other than declaratory statements in the Scotland and Wales Acts about the preservation of the unity of the UK, there is no effort to legislate symbolic issues. The Northern Ireland legislation is quite clear that there must be symbolic and other parity between different communities.

V. THE ALLOCATION OF POWERS

1. Is the system of allocation of powers mainly enshrined in the Federal Constitution? Is it secured by the Federal Constitution?

Allocation of powers to Northern Ireland, Scotland, and Wales is in their respective constitutive Acts; subsequently, Wales has seen considerable expansion of powers in Wales legislation (for example, legislation allowing a reorganisation of the health service in Wales, passed by Westminster, carries out the reorganisation desired by the Welsh government and also transfers the powers to Wales to conduct future reorganisation on its own).

2. Which is the basic design of the system (a list of federal powers, a list of state powers, a double list, other solutions)?

Scotland has a negative list that specifies central state powers and grants all others to Scotland; Wales has a detailed list of statutory instruments (excluding primary legislation) that it can change; Northern Ireland has a negative list akin to Scotland but subject to oversight due to the fear it will be used for discriminatory purposes.

3. Is there any constitutional provision concerning residual powers, namely, "new" subject matters, not allocated either to the federation or to the states by constitutional law? If so, where are allocated the residual powers (federal or state level)? Is it actually effective? Are there any rules or principles that presume that the power is vested in a certain level of governance?

“New” powers automatically go to Scotland unless Westminster legislates otherwise or Scotland chooses to ask Westminster to legislate; in Wales they go automatically to Westminster; in Northern Ireland they go to Northern Ireland unless there is a human rights or political reason for them not to do so.

4. Is there any rule that gives preference to federal law in case of conflict with state law? If so, has it been actually applied?

“The legal and administrative precedents in the UK delineate competencies relatively clearly; the likely clashes are in Wales, where Westminster primary legislation is much stronger than Welsh secondary legislation.

5. Are there other general rules? Which are they?

The UK’s use of individual statutes in highly asymmetric decentralisation means there are almost no general rules.

6. Does the Constitution allow making more flexible the allocation of powers by mechanisms other than constitutional amendment? In other words, can the federation, by itself, transfer

or delegate powers to states? Through which mechanisms? What role did all those mechanisms play on the evolution of the federation? How have the decisions regarding the material, economic and human resources to be transferred as a consequence of a transfer or delegation of powers been taken?

The Constitution is just the sum of statutes, legal decisions, and conventions; the real question is how easy it is to change particular legislation on account of its political and legal importance (i.e. its constitutionality).

7. Has any subject matter been fully attributed to just one of the territorial levels of governance –federal or state-?

Shared powers are understood but not seen as a distinct category of law or public administration; presently the UK-wide civil service has performed the necessary co-ordination very well. The Scottish Parliament often lets Westminster legislate, offering its consent by a vote. That said, key areas (health services, schools, universities, social security) are wholly the preserve of one government or another—Scotland could theoretically abolish the public health system and the UK could do nothing.

8. Is the technique of "shared" powers recognized (both federation and states have legislative powers, although federal law takes precedence over state law in case of conflict)?

There are informal mechanisms and legal-administrative arrangements that work like this but there is no formal category of law or public administration.

9. Are there any subject matters in which legislative power is exclusively attributed to the federation, while executive power is attributed to the states? If so, is the regulative power regarded as legislative or executive power? Can federal legislation determine state administrative organization and practice?

This is the basis of the Welsh settlement—the most important legislation is Westminster, the implementation and relevant implementing legislation is Welsh. Welsh powers are determined from a long list of Westminster secondary (implementing/administrative) legislation that the Welsh can change. This is widely viewed as unsatisfactory and is likely to change soon (a Commission is at work on proposals).

10. Are there any subject matters in which the federation can establish principles or basis for the state legislation? If so, has the federation made an extensive use of this power? Is there any mechanism to correct that situation?

In Wales this is part of Westminster's primary legislative powers. In Northern Ireland such powers are confined to policing, human rights and similar issues, and are to be phased out. In Scotland there are effectively none.

11. Does the federation have an own administrative organization on the state territory? How strong is that administration? In which fields does it act? Can the state administration exercise any federal power delegated by the federation? If so, are state administrative bodies hierarchically dependent of the federal administration? What mechanisms of review are reserved to the federation to secure that states correctly enforce federal law?

There is no general UK government organisation in Scotland, Wales, or Northern Ireland; the central state operates the agencies and departments it retains on a UK-wide basis (so the UK-wide Department of Work and Pensions operates social security offices around the UK).

12. What are the general limits of state powers?

State powers are limited by (1) the competencies listed in the relevant legislation establishing devolved governments (2) the UK's system of unconstrained block financing (3) the lack of administrative capacity or interest in the affairs of Northern Ireland, Scotland, and Wales. Other than the "nuclear bomb" of rewriting the devolution legislation, the state has few powers in areas of devolved competency in Scotland, and Wales, in reality, has extensive autonomy as Westminster is not very interested in Welsh public legislation.

13. In your opinion, what are the most important federal powers?

The most important Westminster powers are above all in finance: Westminster sets taxes on major tax bases (above all personal income); Scotland can vary tax rates by +/- 3% and it can allocate it as it chooses but by block grant. Combined with Westminster's dominant role in industrial policy and complete competency in social security and pensions, it effectively controls all major forms of income redistribution and macroeconomic policy, and when Westminster's dominance of transport is taken into account it also is much stronger in questions of inter-regional redistribution. Westminster has also proven quite open to involving devolved countries in EU policy but still decides the policies.

14. In your opinion, what are the most important state powers?

The most important devolved powers are in social policy: health, education, universities, and local government.

15. Have any of these federal or state powers been extensively interpreted?

Broadly, no, although there have only been a few years during which Labour governments in the UK, Wales, and Scotland and a unified civil service were able to tamp down dispute and prevent invasions of competencies. There has been some tension in areas of elderly care (by far the highest-profile area) and in transport.

16. Does the Constitution provide the transfer of sovereign powers to regional or international organizations? Does it address this issue in the domestic legal system, taking into account the decentralized structure of the federation? Does it give the states the right to ratify international treaties or agreements? If so, in which conditions? How is the international responsibility of the federation addressed?

The legislation on devolution entrusts EU and other international affairs exclusively to the UK government, although in practice there is extensive consultation and co-operation.

VI. LOCAL AND MUNICIPAL GOVERNMENT

1. Does the Federal Constitution recognize local or municipal autonomy? And the state Constitutions? If so, which term is it used to refer this autonomy? What substantially follows from this constitutional recognition?

Local government is merely another creature of Westminster; in Northern Ireland and Scotland, the new devolved governments control local government and in Wales power over local government is divided between the devolved country and the UK.

2. Are the local representatives democratically elected by the people of the municipality or local entity? If not, which is the method for the election?

Local councillors are all elected.

- 3. Are local entities under federal or state control? If so, are these controls limited to issues of legality or do they also cover issues of opportunity? Can municipalities or other local entities challenge federal or state law or other decisions, on the grounds that they violate their autonomy? Before which bodies or courts?**

See 1 (since the statutes are most of the constitution).

- 4. Is the design of the local government (kind of local entities, organization, powers, human resources, etc.) under federal or state power? What local subject matters or functions are allocated to the federation and the states? Can the federation establish direct bilateral relationships with municipalities or other local entities? Can the federation intervene upon their activities by exercising federal powers concerning a particular sector or through its spending power?**

Scotland and Northern Ireland have local government as exclusive competencies and can redesign them at will. Wales requires concurrent Westminster legislation. Any part of the UK—local, devolved, or central—can be challenged by any other part, or by the public, for having violated legislation.

- 5. Are there "city-states" in your system? According to which provision? Is their regime equivalent to the states' one? Apart from these city-states, are there any municipalities with a particular autonomous regime? Which ones? Which is the basis for the recognition of this regime?**

All municipalities in any given area—England, Northern Ireland, Scotland, Wales—are subject to the same regime. Northern Ireland and Scotland can make their own regime; Wales must work with Westminster's primary legislation as well.

- 6. Can states create "intermediate" local entities between municipalities and states? Are there any intermediate local entities in your system? Do they exist only in some states or in the whole territory of the federation? Are states free to establish their territorial limits? What powers do they have? To what extent are they dependent on the states? What is the system for the election or appointment of the chiefs of their governmental bodies? Can the federation intervene in the organization, powers or financing of these intermediate local entities? How? For which purposes?**

The UK (in England), Scotland and Northern Ireland can create any entities they wish in local government, but have not done so in recent years (local government reorganisation in the next decade is almost certain in Wales). The UK tradition is to create special appointed boards for particular tasks rather than modify local governments; local government reorganisation has been about rationalising the provision of existing local government services. In London, a major exception, the UK government has created the Greater London Authority, which is akin to a regional government and which can cajole and persuade London's individual local governments.

- 7. How are local powers determined? Can local governments provide services or perform federal or state powers? If so, which legal mechanisms coordinate their collaboration (delegation, assignment, etc.)? In which subject matters can this form of collaboration exist? Are local governments obliged to cooperate? Do they have a right to receive financial funds from the federation or the state that asks for the collaboration?**

Local government is sufficiently tightly controlled by its superiors that powers delegated to it are usually delegated to it by law and overseen by the superior government's civil service. Discretionary grant funding from the superior government provides added incentives for them to carry out the tasks asked of them.

8. Do local governments have normative or regulatory power? Which other general powers do they have? What powers are lacking?

Local governments have extensive powers to pass bylaws on such topics as noise, nuisance, and building and extensive planning powers to control development (shared with their superior governments, which have rights of override). They lack any criminal law capacity worth mentioning, and their financing and activities are extremely tightly controlled by superior governments that control finance and relevant legislation and are concerned with equal standards of service rather than local variation.

VII. INTERGOVERNMENTAL RELATIONS

1. Does a principle of collaboration or constitutional loyalty among the different political and administrative authorities exist in your federation? If so, where is recognized (constitutional law, convention)? Which is its content and what consequences follow from this principle? To what extent is there a hierarchy among the different administrations?

There is no formal, constitutional principle but the Memoranda of Understanding enshrine what would happen anyway, namely co-ordination, co-operation and confidentiality in most circumstances. In day-to-day policymaking and administration, the superiority of the UK government is much modified by the strong protection of competencies of Northern Ireland, Scotland, and Wales.

2. Does the Federal Constitution establish a system of intergovernmental relations between the federation and the states? If so, through which mechanisms? Are these mechanisms established in other constitutional or legislative provisions? To what extent are institutional practices or conventions important on this matter? Generally, which is the importance of intergovernmental relations for the dynamics of the system? To what extent do they allow to make more flexible the formal allocation of powers?

There is very little legislation pertaining to intergovernmental relations; both the unified civil service of the UK and the Labour politicians in office prefer informality. It is likely this will change when intergovernmental relations are put under more stress.

3. Are there organisms to coordinate the horizontal collaboration among states? Does the federation participate in these organisms? Is an authorization required for their creation? How the states are represented? Are they important for the system?

There are a number of organisations; the most important are JMCs (Joint Ministerial Councils) in which the four politicians responsible for a subject area, or the four prime/first ministers meet to discuss a policy area. These promote co-ordination, co-operation, and confidentiality, which is to be expected in the context of Labour (and the Liberal Democrats) governments being in office in England, Scotland, and Wales, and the three sharing a single civil service. They do not have decisionmaking powers. We do not know if these, or any other aspect of intergovernmental relations, could work in or even survive serious political conflict.

4. Which role do local governments play in the system of intergovernmental relations? In which organisms of collaboration do they participate?

Local governments can constitute associations of any kind but have no built-in role. The largest local government, the Greater London Authority (which has few direct competencies), is emphatically not treated as a devolved government.

5. Do different governments or administrations usually participate in organisms or entities with legal entity (public or private: consortiums, associations, foundations, private societies,

etc.)? Is this joint collaboration usual for developing public works, managing services, or financing of activities? Which legal regime is applicable?

The favoured form of co-operation on the local level (beyond the most common, simple agreements to work together) is a privately incorporated organisation with an appointed board that receives grants from interested parties. In major issues, such as infrastructure building, there typically is a PPP (public-private partnership) in which the government or board works closely with a private contractor.

VIII. TAXATION

1. What is the level of state autonomy regarding incomes? Can they establish taxes? If so, are there any constraints? In other words, can they make use of the same kind of taxes (official prices, rates, extra charges, etc.) that the federation establishes? Can they use both direct and indirect taxation? Can they establish taxes over subject matters already charged by the federation?

Scotland can vary the income tax rate by 3%. This has not been done and would change revenue very little. Otherwise, there is no tax power for the devolved governments. That said, there is room for creativity: their control of local government and its taxation, and their user fees (such as for water supply in Northern Ireland) give them more fiscal flexibility than appears in the law or than they have used.

2. Can states ask for credit or issue public debt within the state or federation without the authorization of the federation? Can they do this abroad? If the federation has the power to authorize these operations, which are the legal basis that regulate this?

Public debt is tightly controlled by the Treasury in Westminster; even if the law on whether they can issue debt is murky, the political reality is that they will not do it without Treasury approval and have done it very little (Northern Ireland has borrowed to fix its water system, with Treasury approval and conditions). Appointed boards can and do run deficits and accumulate debt.

3. To what extent are state incomes important in contrast to the transfers that the states receive from the federation? How are these transfers regulated?

Funding is set by an odd formula, unique in the world (the Barnett Formula), that allocates new spending on a per-capita basis—for every *new* £1.00 spent on English departments, Scotland receives £0.12, without constraint. Therefore each year's budget is equal to last year's plus the increase in spending, as set by the Barnett formula. This is to eliminate enormous funding disparities that have historically given Northern Ireland, Scotland, and Wales up to 50% more per-capita funding than England. It is under increasing political pressure since England is still funded less on a per-capita basis but Northern Ireland and Wales are seeing their per-capita budgets shrink rapidly.

4. Do states participate in federal taxes? If so, in which taxes and to what extent do they participate? When states participate in federal taxes, do they have any kind of normative power (for instance, power to fix deductions, exemptions, discounts, etc.)

The tax structure is wholly set by the UK government.

5. Do states receive direct transfers or funds from the federation? What criteria are used to determine the amount of these transfers? Do states participate in the determination of the amount of transfers? If so, through which mechanisms?

At present, all funding is block transfers from the UK since Scotland has not chosen to raise its taxes 3% (an operation that would be administered by the UK Inland Revenue anyway). The Barnett formula is set entirely by the UK Treasury; any replacement would also be set by the UK government. It would

be extremely surprising if there were not to be extensive consultation with the devolved governments before the change.

- 6. Can the federation intervene in what the transferred funds will be allocated to? If so, in which subject matters? To what extent? Generically or specifically? Can the federation determine their management or procedure? In general, how has the federal spending power determined state powers? What is its percentage with regard to state incomes? How does this system work regarding other federal and state transfers to local governments?**

The Barnett formula simply allocates funds to governments (technically, it allocates them to Whitehall departments—the Scottish Office, the Welsh Office—which then pass it on). There is no formal or meaningful informal constraint on what is done with it. The largest argument in public about devolution finance happened when Scotland spent its budget on expanding home care for the elderly, to the irritation of the UK government. This meant Scotland was actually taking over a UK competency (allowances for home care); the UK government simply stopped paying the allowances for home care in Scotland, thereby effectively giving up on that competency, demonstrating Scotland's autonomy to spend in any of its competencies, and taking advantage of Scotland's expansion of its powers to save money. See Rachel Simeon's chapter in A. Trench, ed. *The State of the Nations 2003* (Exeter: Imprint Academic).

- 7. What follows from the principle of "tax solidarity" among states? In other words, what kind of economic contributions do the states make to the federation? How does this system work, on the basis of which criteria?**

The UK makes economic contributions to the devolved countries. The devolved countries lack the fiscal capacity or a mechanism to contribute directly to the UK government (except as described in the case of Scotland and home care).

- 8. Can the federation unilaterally compensate the debts that states owe to the federation (for example, reducing federal transfers)? If so, in which fields do this power exist? Do states have any safeguards (right of audience, judicial actions, etc.)?**

The financing formula is wholly set by the UK Treasury

- 9. Who is in charge of the management, liquidation and collection of taxes? Can local governments collect taxes on behalf or by order of the federation or the state where they are located? To what extent and in which fields is this method used? To what extent is it relevant?**

The administration of taxes is wholly carried out by the UK Treasury (via its Inland Revenue).

- 10. What is the percentage of public spending in which each level of government –federal, state and local- incurs? How would these percentages change excluding the spending on defense, education, health, pensions and administration of justice? How many civil servants or administrative officials have each level of territorial government? Which are the figures excluding the above-mentioned fields?**

% of Public Spending by tier of government 2001/02

UK & England (UK government)– 70.4%

Devolved Administrations (Northern Ireland, Scotland, Wales) – 13.7%

Local Government – 15.8%

% of Public Spending excluding UK 2001/02

UK (without England, i.e. defense, social security etc.) – 35.5%
England (UK government spending in England of England-only departments)– 34.9%
Devolved Administrations (Northern Ireland, Scotland, Wales)– 13.7%
Local Government – 15.8%

% of Public Spending minus UK spending in DEL 2001/02

England – 54.1%
Local Government – 24.5%
Devolved Administrations – 21.4%

(Source: HM Treasury Departmental Expenditure Limits data for 2001-02

http://www.hm-treasury.gov.uk/Documents/Public_Spending_and_Services/Public_Spending_Data/pss_pss_pesainde_x.cfm.)

Number of Civil Servants by tier of government 2001/02

UK civil service – 485,400
Scottish Executive – 12700
National Assembly of Wales - 3340
Northern Ireland Executive - 24700

11. To what extent are the relationships between levels of governance regarding the tax system satisfactory? Which elements are more satisfactory? Which elements are less satisfactory? At present, is there any trend that should be noticed?

Devolved governments appreciate the unconstrained block funding of the Barnett formula, which gives them extensive autonomy and the UK state very little ability to intervene. Pressure is building against the allocative formula in Barnett, however, and it is likely to be reviewed—at the moment Northern English, Northern Irish, and Welsh politicians are all seeking reviews of the formula as they feel that it is unfair, and when the Scots also seek a review it is almost certain to happen. The debates among experts focus on the need to balance redistribution to the poor with the need to avoid creating dependent governments—the UK Treasury suspects that extensive solidaristic transfers could reduce governments' interest in improving their economies.

12. Can the federation establish the maximum or specified levels of state indebtedness or budgetary deficit? Can the federation establish the maximum wage of public officials (federal, state, local, etc.)?

The UK effectively controls debt. Public sector salaries are often negotiated on a UK level—small, overstretched devolved governments prefer not to negotiate with groups like the British Medical Association or the public sector unions—but there are increasingly numerous separate wage and conditions deals in different parts of the UK.

13. Are there coordination mechanisms among the different levels of governance? If so, are there institutions with a political nature (for instance, an assembly of territorial representation –Senate-, governmental institutions -councils of prime ministers-, etc.)? Are there mechanisms of technical coordination? (i.e., deductions in quotes of subcentral taxes in central taxes, etc.).

The centralisation of finance in the Treasury means that there is very little co-ordinating activity other than the normal machinery of civil service and finance ministers' consultation. Effectively, the UK

government sets the tax income and England budget, and notifies the devolved governments of what they will get, which they can then spend with no real constraint.

X. LANGUAGES

(Section to be addressed only in those systems where their multilingual reality is somehow legally recognized)

- 1. Does the Federal Constitution recognize more than one official language in the whole federal territory? If so, which are they? At the federal level, are they officially used on equal basis in the whole territory of the federation by the different authorities? Are they equally used in private? Why? Does the federal Constitution or law establish linguistic citizens' rights or duties?**

There is no statement that the UK overall is multilingual. The Welsh devolution legislation recognises Welsh and seeks promotion of it such that all public services can be accessed in Welsh, anywhere in Wales as well as allowing the Welsh administration to promote it elsewhere such as in schools. The Northern Ireland legislation recognises both Gaelic and Scots-Irish, although there are few speakers of the former and the latter was largely invented since 1998 by Protestants in order that there might be Catholic-Protestant parity in linguistic treatment.

- 2. Beyond recognizing or not more than one official language, does the Federal Constitution recognize the existence of other languages and the need of protecting them as well? Could you tell, approximately, the quantitative importance of these diverse linguistic communities?**

A great deal of legislation in the UK stresses the importance of public administrations serving diverse populations; outside Wales, where promoting Welsh is very important, the focus is on immigrant populations and services to them in languages such as Spanish, Urdu, Russian, Portuguese, Bengali, Chinese, and Hindi.

- 3. Do state constitutions recognize official languages different from those recognized by the Federal Constitution? If not, are they allowed to do it? Are federal and state official languages on an equal footing? Can states establish linguistic duties to citizens and companies different from those established by the federation? Can states exclusively or mainly use an official language different from the one established by the federation as official?**

In Wales, in law and in practice, Welsh should be normalised and on an equal footing with English in public administration and affairs; this includes a bilingual public service, services and signs in Welsh, and promotion of Welsh through Welsh-language media and schools. Northern Ireland's real commitment to linguistic diversity is nil since linguistic issues are bargaining chips in the ongoing peace process negotiations and the languages scarcely exist.

- 4. Broadly speaking, which is the linguistic system regarding education?**

All parts of the UK, but especially England with its many diverse immigrant populations must offer some education not in English. In Wales there is an extensive effort to incorporate Welsh into bilingual education in the state sector (including compulsory Welsh classes in most schools as part of the national curriculum), and state support for Welsh-only schools. This, like bilingual government publications, predates devolution (Welsh was first strongly promoted in 1981 by the Conservatives); its implementation is more thorough since devolution.

- 5. To what extent are legislation and administrative practice adapted to the multilingual reality of the federation? To what extent are they the origin of conflicts between the different levels of governance or among the population? Are the different languages an important identity symbol of the state?**

Language issues matter in Wales where there is an important cleavage between self-identified Welsh who do speak Welsh, and see that as the marker of Welsh identity, and self-identified Welsh who do not habitually speak Welsh and do not see it as a major part of Welsh identity. The former are mostly in the rural north (where it can be hard to function in English) and the latter, much more numerous, are mostly in the urban, industrial south (where it is almost impossible to function in Welsh). Atop this are efforts in the rural north, led by Plaid Cymru councillors, to preserve Welsh-language communities against English-speaking immigrants; this is considered very offensive by the southern self-identified Welsh who do not use Welsh or consider it a major part of their identity and damages Plaid Cymru in the south. Promoting Welsh is a large economic sector and Plaid Cymru activists concentrate in it and in the bilingual public service; this might save Welsh numerically but causes tensions in politics. Plaid Cymru and Labour are both trying to be formally bilingual in order to avoid the heated polemics that come with being seen as siding with English or Welsh. Other than through any hypothetical challenges under European human rights law, the language issue, its policies, and its problems, are wholly a Welsh competency with no real UK role, and have been for decades.

X. GLOBAL ASSESSMENT AND ADDITIONAL COMMENTS

1. At present, how is the level of political decentralization generally assessed? What is your assessment?

The UK is presently extremely asymmetric and likely to change as a result. Effectively, devolution is a response to particular situations in Northern Ireland, Scotland, and Wales, and gives them a high degree of autonomy in particular areas. England, with 85% of the population and overwhelming economic dominance, is directly ruled by the UK cabinet. Thus, Scottish and Welsh MPs vote on English health and education, but the reverse is not possible. The response to this situation of asymmetric devolution has been a resurgence of English regionalism built on the very slim base of England's weak and small regional civil societies—English civil society is highly centralised in London, and England's politics follow. Nevertheless, the Labour government is continuing with plans for English regions and it has designed a form of English regional government that regions can adopt by referendum. It is likely that the three northern regions with the strongest identities will vote on whether to have assemblies in 2004 (they are the Northeast, the Northwest, and Yorkshire-Humberside). Whether any will vote for an assembly is very debatable; what is clear is that there is no pressure for an English parliament or for regional governments in the south (except Cornwall) and that English public opinion is almost totally unconcerned by these issues.

2. What are the main historical claims by states? To what extent are they satisfied?

Devolved governments are so new that it is difficult to see consistent new claims—there is not enough history and much of their activity since their creation in 1998 has been focused on exercising their own competencies. Wales certainly seeks a legal regime akin to Scotland's—with primary legislative powers—and will probably get it. Northern Ireland until 1972 was a strange polity from which it is difficult to draw lessons, but it was largely concerned with maintaining its autonomy and funding its efforts to create its own, effectively identical, versions of UK programmes.

3. What are the risks and main opportunities for the development and consolidation of the system of political decentralization?

There are a number of risks. The most abstract is the one equally feared in Canada, Spain, or similar countries, in that one group is numerically dominant and could govern the country in a way harmful to the smaller groups. Much of the drive for devolution in Scotland and Wales was fear of a repeat of this experience, as that was what happened under the Conservatives. The most concrete is that the financing system will be opened for review and create damaging polemics or shift major power to the UK Treasury. In Scotland, nationalists and Conservatives seek “full fiscal freedom” (transfer of tax powers), while almost every part of the UK feels underfunded. Thus, in the next few years there will be a debate about whether the UK should collect all taxes and then give block transfers; and about

what formula it should use to allocate funds. This would not so much threaten the unity of the country as the power of devolved governments (if the UK Treasury gains control of funding allocation) or the overall levels of social provision (if regions start to compete to lower taxes). The final danger lies in the party system. The UK has no state-wide party system; the Labour Party is the only party that is a serious force in England, Scotland, and Wales. In England its opposition is the Conservatives, while in Scotland its opposition is the separatist SNP and in Wales the opposition is the nationalist, nonseparatist Plaid Cymru. This means that the current structure of intergovernmental relations and the overall harmony we see is due to the fact that these governments, for their differences, are all Labour (with Liberal Democrat participation in Scotland and, at times, Wales). It is doubtful that the SNP could declare independence for Scotland if it won, but an SNP government in Scotland, a Plaid Cymru government in Wales, or a Conservative government in England would each seriously test the system. Equally, it is unhealthy to have the state structure depend on a single political party winning all the elections.

4. What are the main trends of development? Which is the likelihood of them coming true?

(see 1 and 5). The key question in the UK is whether its extreme asymmetry matters; the second question is whether its system of intergovernmental finance and relations is as robust as it seems. It is quite possible that its extreme asymmetry does not really pose a problem, since historically, politically, and in public opinion England has not cared much about how Scotland and Wales are run. As for the stability of the system, at present it is barely institutionalised and appears to depend on goodwill between Labour (and Liberal Democrat) politicians and the civil service that England, Scotland, and Wales share.

5. Generally, would you say that the system is becoming more centralized, decentralized or that it is in a relative equilibrium?

Provisionally, the system will continue to decentralise but momentum is slowing and could easily stop. Within the next five years, Wales will probably get simpler and stronger legislative powers; Scotland might get stronger tax powers; and 1-3 English regions might get weak regional assemblies. None of these, however, is a popular cause and all three could easily founder. What is more likely is that some sort of shock, such as a Conservative government in the UK elected by the English electorate, or a SNP government in Scotland, will put the system under great strain that could change its direction towards greater centralism or speed up decentralisation to the point of Scotland voting on independence. The party systems continue to diverge and that makes policy diverge.

6. Would you like to add any additional comment about the political decentralization of the federation that was not mentioned in the Questionnaire? Would you like to make any suggestion about the structure or the contents of it?

I would ask clear questions about the nature and control of the civil service—in the UK it matters that the civil service is a UK body that virtually governs itself. England, Scotland, and Wales all are constrained by the need to work with the independent civil service structures in order to change their staffing. This is particularly a constraint in Wales, which inherited a very weak civil service that is badly overstressed but which must get the permission of Whitehall to expand. Its advantage is that the similar, effective and clean, culture of the civil service eases intergovernmental relations and policy since the mantra of the memoranda of understanding—consultation, co-operation, and confidentiality—also virtually define the ethos of the UK civil service for the last 170 years. Northern Ireland has its own civil service, which models itself on Whitehall, but which suffers from not being as well connected to the networks that link England, Scotland and Wales. Equally, there is pressure on this structure, particularly from Wales, which is considering establishing a unified Welsh public service for the Welsh government and its local governments. The Scots and Welsh report that their civil servants are perfectly loyal; there is an entrenched culture that civil servants defend their masters, whether they are UK departments or the Scottish Executive. This issue looms particularly large in the

UK, at least, and explains basic differences in the style of policymaking and intergovernmental relations.

7. Would you mind listing particularly remarkable literature -on the basis its prestige, depth, clarity, approach-, which allows to achieve a better knowledge of your federal system?

For history and background, Vernon Bogdanor's *Devolution in the United Kingdom* (Oxford University Press, various editions) is a classic, well-written work. Noreen Burrows' *Devolution* (Sweet and Maxwell, 2000) is a thorough legal survey.

The Constitution Unit runs the largest project studying devolution in the UK. It includes an annual yearbook on devolution (*The State of the Nations*, published by Imprint Academic of Exeter) that includes extensive analyses of the politics of individual countries, intergovernmental relations, policy, finance, Westminster and Whitehall, and England. It also produces detailed quarterly reports on Northern Ireland, Scotland, Wales, English regionalism, and the centre (Westminster/Whitehall). In addition, we have two large research projects (*Nations and Regions: the Dynamics of Devolution*, and *Devolution and Health*) that focus on devolution's consequences and evolution. The quarterly reports, approximately 100 publications, and information about ordering our devolution yearbooks can all be found at www.ucl.ac.uk/constitution-unit, or by contacting myself or our publications manager Matthew Butt at m.butt@ucl.ac.uk. These are virtually the only source of serious analysis of the development of devolution in the UK as a whole including the mechanisms of intergovernmental relations and finance.

For books on the individual countries: Northern Ireland is very much studied—one good estimate is that there have been 12,000 publications about it since 1965—but for the details of devolution the best book is Rick Wilford, ed. *Aspects of the Belfast Agreement* (Oxford University Press, 2001) as well as some of the chapters in Michael Cox, Adrian Guelke and Fiona Stephen, eds. *A Farewell to Arms? From 'long war' to peace in Northern Ireland* (Manchester University Press, 2000) such as that by Bew. Scotland is also much studied; see the classic *The Scottish Political System* by James Kellas for Scotland's autonomy before devolution (Cambridge University Press, 5 editions) as well as Lindsay Paterson's *The Autonomy of Modern Scotland* (Edinburgh University Press, 1994) which is not a good factual source but is the best interpretation of Scotland's historic autonomy. There is no particularly good survey of Scottish politics since devolution; a basic overview is Peter Lynch's *Scottish Government and Politics* (Edinburgh University Press, 2000). Wales is not at all well studied; see Denis Balsom and J. Barry Jones eds. *The Road to the National Assembly for Wales* (2001, University of Wales Press) and Rick Rawlings' "The New Model Wales" *Journal of Law and Society* 25, p. 461 (1998) as well as the *Wales Law Journal's* various issues. Most books purporting to be about British politics are about England. H. Hecló and A. Wildavsky's *The Private Government of Public Money* (University of California Press, 1974), P. Hennessy's *Whitehall* (Fontana, 1990) and C. Campbell and G. Wilson's *The End of Whitehall?* (Blackwell, 1995) are the best on the making of policy, with a focus on the civil service and Whitehall; P. Riddell, a very good journalist, wrote *Parliament Under Blair* (Politico's, 2002) which is better than nearly all the formal scholarly work. Richard Rose, *Politics in England* (various editions; Macmillan/Palgrave) is probably the best overall work on UK politics by a scholar who is very sensitive to the meaning of territory in the UK.