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Constitutional reform: Sustaining a viable United Kingdom through the 21st century

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Executive summary

The UK faces an existential challenge which demands far-reaching changes to governance. The Brexit process has exposed deep divisions that could presage the end of the union between England and Scotland. But even without the threat of Scottish independence the unwritten constitution would be under strain. Confidence in politics is at an all-time low; the response to the COVID-19 pandemic has highlighted weaknesses in an over-centralised administration; and conflicts are growing between the centre, the English regions and devolved nations and between the executive and the judiciary.

A fundamental review of the institutions of government is needed to safeguard the UK's integrity and viability as a state. This would aim not just to patch up the fraying devolution settlement with Scotland, Wales and Northern Ireland, but also to extend a much greater measure of devolution to English cities and regions.

We suggest this would involve creating a federal system of government underpinned by a codified constitution including entrenched clauses set out in a "Basic Law" enacted by Parliament and interpreted by the Supreme Court. The House of Lords would be reconstituted, in effect, as a federal upper house, elected by a form of proportional representation, to uphold the new constitutional settlement and represent the interests of a radically decentralised UK. The Commons should retain control of taxation and spending, but in a second stage it, too, requires reform in numbers, mode of election, and culture.

Such a programme of radical reform, with closely inter-related constituent parts, needs to be launched by government with a measure of cross-party consensus, as well as the involvement of the devolved nations and English regional representation. It will require extensive public consultation and discussion. Such is its complexity that creating a detailed blueprint should be the task of a special constitutional commission, with suitably diverse membership and an effective supporting team.

Part 1 – Problems

Introduction

1. Confidence in the integrity and effectiveness of the British state is at its lowest level for a hundred years.

   1.1. The Brexit process has exposed divisions between the nations of the UK. In particular, Scotland seems more conscious than ever of its distinct identity and aspirations for a separate and European future.

   1.2. The 'English problem' remains largely unresolved. England itself is too big in relation to the rest of the UK to be an effective national level of devolution; but it seems to have as yet no agreed comprehensive approach to devolving power to its cities and regions.

   1.3. Public trust in politicians has never been lower. Few outside the Westminster world think that Parliament is an effective locus for determining national priorities. The adversarial nature and behaviour of the Commons is widely perceived as unhelpful and unedifying. And virtually all agree that the House of Lords is in need of significant reform – even though there is no consensus on how this should be done.

1.4. Recent moves by Government, have included the illegal prorogation of Parliament and the proposal (later dropped under cross-party parliamentary pressure) to give ministers the authority to override international treaty obligations, as well as ministerial and backbench calls to limit the scope of judicial involvement in issues deemed political. All these, and perhaps above all the visible fragility of the Union itself, have called into question the stability of British institutions, to the point where Britain's 'credit rating' has recently been downgraded internationally, at least in part explicitly because of this implication.

1.5. Finally, the pandemic crisis has exposed the weaknesses of a highly centralised administration that concedes less power to regions and local authorities than any other comparable democratic system.

2. The UK therefore faces the most pressing need since the formation of the Irish Free State a hundred years ago to review its governance and ensure its viability and integrity as a state. This is needed both to improve the effectiveness of governance and also to offer a compelling case for the Union, whose very existence is now under challenge.

3. Part 1 of this paper summarises the main problems that we face. Part 2 then proposes some solutions.

Devolution to the nations

4. For the UK as a whole, the devolution settlement of 1997 is fraying, especially in Scotland. With the rise to power of the SNP, and in the wake of the Brexit vote, the momentum for Scottish independence may now be unstoppable. It is also possible that the working-out of the new relationship between the UK and the EU will accelerate the eventual integration of Northern Ireland into the Republic of Ireland.

5. For Scotland, if a new referendum results in a majority for independence, this will trigger complex negotiations. The SNP certainly means to achieve full sovereignty, such that Scotland would largely cease to be a constitutional issue for the UK – although this would create major issues of security, economics, and diplomacy. Were Scotland to become an EU member state, as is the express aim of the SNP, the relationship would effectively be the same as with the Republic of Ireland.

6. However, the decision on Scottish independence will certainly also have implications for England's relationships with Wales and Northern Ireland. The demand in Wales for greater devolution will likely become ever more insistent. And the 'English question', already posed implicitly by the divisive experience of the pandemic, will be thrust further into the spotlight. A new constitutional framework of governance for the UK stands to be as politically unavoidable as it is objectively necessary.

Over-centralisation in England

7. Devolution has in recent decades led to substantial decentralisation of executive and operational functions in the case of Scotland, Wales, and Northern Ireland. But England remains the most centralised large polity in the whole of the Western democratic world.

7.1. Even France – probably, of all our natural comparators, the most like England in its tradition of centralisation – now has strong mayoralties and regional councils. France has gone from Napoleonic centralisation, with prefects and sous-prefects acting as the executive agents of Paris across France, to a much more decentralised system where communes, municipalities, and regions all work together with significant autonomy.

7.2. England used to be more decentralised, with county councils etc. having real financial and executive powers. The two systems changed places in the 1980s, when France decentralised under President Mitterrand and the UK removed fiscal power from local authorities through rate capping and hypothecated grants.

8. There are, however, serious obstacles to reform. England has been the most centralised country in Europe since the Norman Conquest in 1066, and English governments and people think in centralised terms and attitudes. For example, public services are expected to be broadly equivalent across the whole country (cf. the United States, Germany, Canada, etc..)
9. Moreover, the central Government tends to be reluctant to cede real autonomy to local units. True federalism implies giving these units significant authority to set differential levels of public services. Scotland and Wales have shown the way: English federal units of administration would certainly seek to follow.
10. This is not just an administrative matter. Responsible administrative decentralisation requires some meaningful ability to raise funding. And this in turn entails greater electoral accountability. It will also require a radical change in the traditional Treasury orthodoxy, which has always sought to avoid or minimise any decentralisation of tax raising, other than in very special circumstances such as those that led to the Barnett formula in respect of the devolved nations.
11. Recent experiments with decentralisation have had a mixed record, and have suffered from changed ministerial direction as well as funding constraints:
    11.1. Starting in the 1990s, the nine English administrative regions had some limited devolved executive responsibilities. These were removed in 2011.
    11.2. Elected city mayoralties have been an important innovation. But their powers remain limited, as has become clear to all in the pandemic.
    11.3. Local authorities have suffered a major budgetary squeeze during the recent decade of austerity.

Parliament

12. The **House of Commons** is elected on a first-past-the-post system, which regularly produces unrepresentative results. Never since the Second World War has any party won an election and formed a government on the basis of a majority of the votes cast. Conversely, in only nine years since 1945 have governments not enjoyed a working majority. The UK has experienced only one formal coalition government – which was also the only government that could claim to represent more than 50% of votes cast.
13. A highly adversarial culture in the Commons is both cause and consequence of this electoral system. Especially in recent years, this culture has played a significant role in weakening public respect for, and trust in, the legislature. The theatre of Commons debate – particularly at the weekly Prime Minister's Questions – can all too easily alienate or dismay the general public.
14. The case for this system has always been that it produces stable governments and a strong opposition, whose role (as Her Majesty's loyal opposition) is to hold those governments to account as assertively and aggressively as possible. Its weakness is that it tends to polarise and to inhibit the development of consensus. This in turn makes it more challenging for the Executive to plan, invest, and implement for the medium and longer term.
    14.1. Defenders of the system point to the instability of systems based on proportional representation. Italy is the textbook case amongst our near neighbours.
    14.2. Proponents of a move away from this system point increasingly to Germany – whose post-war settlement has produced mostly coalition governments, but has demonstrated a notably robust balance of stability and responsiveness to shifts in electoral mood.

15. However, the UK overwhelmingly rejected alternative-vote systems in the referendum of 2011, leaving little or no room for more radical versions of PR at Westminster. Yet the devolved institutions all operate on PR systems; and it seems likely that any newly-created devolved institutions would do so too.

16. Finally, with 650 members, the House of Commons is arguably too numerous:

    16.1. It is about 13% larger than the French Assemblée Nationale (for a country with almost exactly the same population size as the UK); and

    16.2. About the same size as the Bundestag (for a country with a population about 20% larger).

    16.3. The US House of Representatives has 435 members (for a population nearly five times as large).

17. David Cameron wanted to reduce the House of Commons to 600, but this objective has now been dropped.

    17.1. Moreover, the experience base of MPs has changed over the past three decades or so. Today, there are fewer MPs with a background in the professions or the public service, and markedly fewer who have been manual workers.

    17.2. On the other hand, there are significantly more who have only ever been politicians or their advisers and agents. Given that MPs provide the major talent pool for Ministers, this is concerning.

18. **The House of Lords**, with around 800 members and an archaic medley of membership qualifications, is clearly far too large. It has also become (notwithstanding many excellent individual members) increasingly lacking in perceived legitimacy and overall quality.

    18.1. Various schemes of reform have been suggested. Most aim to reduce the numbers and establish an elected element (or total membership), typically on a different franchise (e.g. regional and/or PR) from the House of Commons.

    18.2. However, no reliable consensus has been achieved. Since the compromise on hereditary members in 1999, and the establishment of the Supreme Court in 2009, the only notable reform has been the provision for retirement in 2014. Since then 114 members have retired.

    18.3. However, overall numbers have not declined, due to a plethora of appointments by recent Prime Ministers. An attempt in 2018 to bring down the membership to 600 through a self-denying ordinance on new appointments by Prime Ministers was promptly honoured in the breach. Even at 600, the House of Lords would still be the second largest upper chamber – after China – in the world. The French Senate has 348 members, the Bundesrat has 69.

    18.4. Other more modest proposals have aimed at:

        18.4.1. Reducing numbers (e.g. by removing the 92 remaining hereditary positions over time, and by reducing or eliminating the 26 positions held by Anglican bishops);

        18.4.2. Effective participation through minimum attendance requirements; and

        18.4.3. Term limits and/or a mandatory retiring age.

19. The main obstacle to reform, apart from inertia, is that the House of Commons is well aware that a more legitimate composition of the House of Lords would be seen as entitling it to more power, at the expense of the Commons. (The US pattern of dysfunctional competition between the Senate and the Congress brings its own challenges.)

The Executive

20. The pandemic would have been testing under any circumstances. But it has painfully exposed operational weaknesses in the UK's Executive. These weaknesses are chronic, and not fundamentally dependent on which party is in government. One is long-standing underfunding, which has seriously reduced the resilience of the State. But there are also structural problems, affecting Ministers, the Civil Service, and Special Advisers.

21. **Ministers.** British government is hampered by an excess of Ministers and frequent job changes. The size (90-94) and turnover of the payroll vote is not found among comparable democracies. (We acknowledge our debt, here and elsewhere, to the writings of Peter Riddell.) The forces that produce these features are essentially the short-term political convenience of the Government. But they produce malign results.

22. An important indirect cause of this problem is the electoral system. As noted, the first-past-the-post system usually results in governments with a working majority, which do not therefore need to form coalitions. Coalition governments are typically based on highly specific agreements as to which party gets which jobs: Prime Ministers in such circumstances do not have the leeway to change the team whenever they think it suits them. It is noteworthy that the UK's only recent experience of coalition government had much greater stability and ministerial continuity than is typical in the UK.

23. **The Civil Service.** A permanent civil service is essential to effective and honest government. Its role is to be responsive to the priorities of elected governments, while also providing the necessary continuity and impartiality of government administration.

24. The culture of public service and promotion on merit is critical to maintaining a clear separation between the professional requirements of administration and political decision-making. The leadership of the Civil Service is required to model this separation between politicians and permanent officials, both within government departments and across Whitehall. The shared culture, values, and experience of working together across departments is key to ensuring a coherent policy approach as Ministers seek to allocate resources amongst competing priorities.

25. Maintaining these values while modernising ways of working is a challenge for the Civil Service.

    25.1. It requires acceptance by politicians that the system benefits them by providing the best available policy advice grounded in what can, and cannot, be made to work within the law and Parliamentary propriety.

    25.2. The Civil Service for its part needs to ensure that it is open to outside challenge; and that it is sensitive to the concerns of all parts of the country.

26. In recent years, however, this balance has been jeopardised by a number of developments. Some have been imposed by governments in the name of efficiency; some have been frankly political in motivation; and some have been the result of a more general and well-intended desire to open up public sector administration to achieve a flexibility of management modelled on what is perceived as best practice in the private sector. In consequence:

    26.1. The reduction of over 20% in civil service total numbers after 2010, and the sustained cuts in policy staff, have led to a serious loss of policy capability across central government, and in turn to increased outsourcing of policy advice and delivery: but often in an unplanned and highly inefficient way.

    26.2. Permanent Secretaries and other senior leaders have faced growing political interference in their management responsibilities. This pressure, and recent high profile departures, increases the difficulty of providing honest and impartial advice to Ministers, even when this is politically

unpopular. 'Speaking truth unto power' requires a belief that career prospects will not be harmed by so doing; and that Ministers will respect the spirit, as well as the letter, of the Ministerial Code.

26.3. Outside appointments to government bodies are increasingly being made on considerations of political loyalty rather than experience and expertise. The Commissioner for Public Appointments wrote on 7 October 2020 expressing serious concerns that the balance between appointment on merit and Ministerial involvement is now under threat, including through the growing number of unregulated appointments. If this continues it will undermine the concept of a politically neutral and professional administration in central government.

27. Senior politicians and influential special advisers have asserted that the permanent Civil Service is part of the problem with executive government. The argument is often that the system is too cautious, hostile to innovation, and led by a self-perpetuating priesthood of high officials.

27.1. Some have looked admiringly at the professionalism of the French administration, with its Ecole Nationale d'Administration – the ENA elite that supplies leadership in politics and business as well as government. But this model is itself under pressure to become less elitist and closed, and to allow for more social diversity and innovation in those advancing to positions of economic or political power.

27.2. More recently there have been calls in the UK for more disrupters, applying the skills suitable to a tech start-up or big data management to the process of government. We believe, however, that these skills can complement, but not replace, the wider framework of accountable administration and measured risk-taking that are required to manage public money prudently.

27.3. Politicians tend to be keen on risk-taking in the abstract, yet unwilling to support those who find that even well-researched risks can go wrong. There is a temptation to seek dramatic new initiatives to announce, too often based on inadequate consultation and preparation, with unrealistic timescales for delivery.

27.3.1. The drive for rapid results leads to a tendency to centralise decisions on key issues such as IT or procurement.

27.3.2. This in turn exposes serious gaps between those deciding, and those having to manage, the consequences of decisions based on wishful thinking and attractive presentation, rather than rigorous review of the available evidence.

28. **Special Advisers** have developed in recent decades to become an often high-profile source of personal support to Ministers. They can also assist civil servants in dealing with politically sensitive issues, and ensuring that Ministerial preferences are fully understood. They are now a permanent feature of the Whitehall landscape. But problems remain.

28.1. The precise status of Special Advisers, and the mode and extent of their accountability, both within the hierarchy and outside it, is unclear.

28.2. And experience suggests that they can become a barrier between Ministers and Civil Servants, when they should be a pathway. They can also be a plentiful source of leaks.

29. Finally, there has for decades been an uneasy relationship between **No. 10 and the departments of Whitehall.** Recently, under administrations led by both of the major parties, Prime Ministers have sought to bolster their influence over government through increased reliance on key Special Advisers – with mixed success.

29.1. At the same time, governmental effectiveness depends in the end on collective cabinet responsibility and cohesiveness – which in turn requires clarity about who has accountability for decisions, the basis on which they are taken, and the wider Parliamentary responsibility for defending them.

The Judiciary

30. The British judicial system has hitherto been based on the fundamental premise that the judges must carry out the legislative will of Parliament. In the absence of a written Constitution enjoying special status, the courts cannot set aside laws made by Parliament. They may interpret them, but must enforce them. However, they can review whether the Executive is, or is not, acting within the law.

31. Until the past few years, the role of the Judiciary, both in developing the Common Law and in interpreting and enforcing the statute laws of Parliament, has had virtually universal acceptance; and indeed it has been the source of some pride as a bulwark of the British democratic order. Moreover, the 2009 reform that created the Supreme Court has been widely (though not universally) seen as a sensible improvement.

32. However, developments in the fields of human rights and judicial review have raised tensions between Ministers and the judges, and there have even been instances of Ministers publicly criticising the judiciary, who of course cannot (and anyway should not) answer back. It is a clear and important responsibility of the Executive publicly to defend the Judiciary from partisan media attacks of the kind that disfigured the Brexit debate. Recent governments have failed in this duty.

33. In a free society, there will always be friction between the branches of government, perhaps especially between the Executive and the Judiciary. And in this respect, alarm bells have been ringing lately. In particular, the present government seems to have formed the view, especially in light of the two *Miller* cases in 2019, that the Supreme Court has been intruding improperly into the political sphere. As a result, Ministers have threatened to clip the wings of the Judiciary.

34. The fundamental question is how far the Royal Prerogative, exercised on the advice of Ministers, is justiciable. (That it *can* be was settled as long ago as 1610.) In the second *Miller* case, the Supreme Court held unanimously that the power to prorogue Parliament was indeed justiciable. This confirmed that constitutional conventions exist for purposes that can be defined and prescribed in law, and that their use can therefore be tested in the courts.

35. In theory, this decision could be reversed by an Act of Parliament. In practice, a greater risk to judicial control of the Executive may lie in the current (Faulks) Review of Administrative Law. This might result in a proposal to restrict the general scope of judicial review. Such an outcome would be convenient for a government already prone to extending Executive power. But it would fundamentally undermine the rule of law, and would tip the balance of the UK's Constitution away, not only from the Judiciary, but in effect also away from Parliament, in a field where the courts typically act as allies of Parliament.

36. Continuing tensions may well focus more attention on the way in which senior judges are appointed. Indeed, they would almost certainly do so if it is accepted (see below) that the UK should move towards a more codified constitutional settlement. Such a settlement would be highly likely to (and should) have at least some entrenched clauses, which would in turn almost certainly be interpreted by the Supreme Court. That means that the Supreme Court would in effect be empowered to review Parliamentary legislation that contravenes those clauses. That in turn would focus more attention on the background and views of its judges, and also who appoints them.

37. The current new(ish) system of appointing the most senior judges, under which a committee of senior judges and selected lay members presents the Lord Chancellor with a single nomination, has so far worked reasonably well – though there are concerns about diversity and self-perpetuation.

38. But the judges need strengthening against further, possibly more damaging, attack. The main obstacle here, apart from inertia, is the strong opposition of the judicial and legal community to any involvement of politicians in the system – even though it was normal until recently, in the person of the Lord Chancellor.

Part 2 – Solutions

Core assumptions

39. In proposing solutions to the UK's crisis of governance, we assume that under any scenario there will continue to be:

    39.1. A United Kingdom, consisting of England and one or more of Wales, Scotland, and Northern Ireland;

    39.2. A constitutional Monarchy;

    39.3. A bicameral Legislature, of which the Lower House at least is popularly elected;

    39.4. Legislative sovereignty of Parliament (except as modified by entrenched clauses of any future codified Constitution);

    39.5. An Executive drawn from, and answerable to, the Legislature;

    39.6. A non-partisan Civil Service, recruited and promoted on merit;

    39.7. An independent, non-political, Judiciary appointed and promoted on merit, whose senior members enjoy the security of tenure granted by the Act of Settlement 1701; and

    39.8. A human rights regime, whether under the European Convention on Human Rights (ECHR) or a British replacement.

Devolution and federalism

40. On these assumptions, it is clear that the new framework for the UK will have to be some form of federalism. But what shape should it take? From an administrative perspective, two different issues need to be addressed: one arises from the sheer size of England in relation to the whole UK; the other arises from the long-standing culture of centralisation.

41. No system that keeps England as a bloc on its own could work: the disparity of size with the other nations is simply too great. Accordingly, any version of federalism for the UK must include splitting up England into separate areas or units. There is a strong case for doing this anyway, apart from the national devolutionary aspect.

42. There is room for argument about exactly what the federal units should be. There will in particular be issues between metropolitan areas (such as Manchester, Liverpool, and Birmingham) and surrounding regions.

    42.1. The political landscape of England has been changed materially in the past decade by the establishment of elected mayoralties; they could well become the backbone of the emerging political decentralisation of England. In that case, however, the question of what to do about the revival and democratic empowerment of the rural and suburban regions will remain.

43. It may be argued that the involvement of proposed federal regions should be voluntary and gradual, i.e. they should be allowed to come into the new system in their own time. But this would almost certainly perpetuate an incomplete and confused patchwork, with some regions under the old regime, maybe for long periods, and others under the new.

A new Constitution

44. There can be no effective federalism without two major changes to the way the UK is governed:

    44.1. The first is the need for what amounts to a codified Constitution, at least for the purpose of establishing the federation;

    44.2. The second is reform of the parliamentary system. This section sets out the case for each of these two changes.

45. **A codified Constitution.** This is implied by a federal system that distributes power away from the centre. The UK has already started on this journey: while it may be theoretically the case that a single Act of the Westminster Parliament could entirely revoke the devolution settlements with Scotland, Wales, and Northern Ireland, this is plainly unrealistic.

    45.1. The UK government has recently shown a desire to rein in devolved government, but the risk that this would simply encourage the centrifugal tendencies in the nations of the Union is obvious.

    45.2. Moreover, as England necessarily moves along the road towards decentralisation as well, mayoral powers will have to be extended and embodied in legislation that would surely also become to all intents and purposes irrevocable.

46. The totality of such devolving legislation will increasingly be tantamount to a new, codified, constitutional settlement.

47. The UK is alone among developed countries, with only the semi-exception of Israel, in not having a written codified Constitution.

    47.1. The reasons for this are of course historical, notably including the fact that, unlike the Americans and the French, the UK has had no revolution since the Union was formed in 1707.

    47.2. Others include the distribution of power in the UK system, and also its political culture, which has exalted 'flexibility' and the countervailing benefits of pragmatism over legalism.

    47.3. Yet others are argued to lie in the role of the Civil Service and in the growth of judicial review.

48. These reasons have had historical relevance, but the now inevitable requirement for significant further decentralisation demands radical change. The UK system has always provided for elected representation at local authority level. What is new is major devolution – to the three smaller nations of the UK and, increasingly, to directly elected metropolitan mayors in England, whose powers, including tax and even borrowing powers, will grow. The significance of this change is only gradually becoming clearer.

49. Against this background, the case for a new and codified constitutional settlement has grown steadily stronger in recent years. However, the obstacles are formidable, including:

    49.1. The empirical pragmatism and traditionalism of English attitudes, which militate against major changes, especially if they are presented as bureaucratic and legalistic.

    49.2. The inescapable implication that a new codified constitutional settlement would entail giving the Supreme Court the power to interpret it. Moreover, there would almost certainly have to be at least some entrenched clauses, especially about constitutional amendments. Both of these aspects might be viewed with suspicion by the House of Commons and other players, as diminutions of Parliamentary sovereignty.

    49.3. Another feature likely to encounter deep-seated antipathy would be the inevitable 'legalisation' of the constitution and of government in general. At a time when the involvement of the judges in

governmental issues is regarded as 'political', codification may not be seen as popular with the political class.

50. Despite these objections, however, Westminster and Whitehall stand to find themselves being pushed down this path. A body of law is already emerging, the core of which increasingly looks irrevocable in practice.

    50.1. In reality, Parliamentary sovereignty is not untrammelled in the way that some purists proclaim. And anyway, it is only an English doctrine, which Scotland has explicitly never fully accepted – a significant divergence that must not be forgotten.

51. In our view, it would therefore be better to be proactive in advancing on this journey, rather than being forced (e.g. by Scotland or by the major metropolitan mayors of England) to react to the build-up of pressure.

52. This new constitutional settlement would require an Act of Parliament, which would in effect be a 'basic law' – on the analogy of the Basic Law that embodies the German Constitution.

    52.1. Some purists might hold that Parliament cannot legislate away its own sovereignty: we believe, on the contrary, that the legal and political realities are otherwise.

    52.2. Such an Act of Parliament might be amendable by special procedures from time to time – just as the written constitutions of other countries have been – but, as noted above, a body of law is already emerging that is not in practice revocable. This new Act would incorporate and build on this existing basic law, and it would be similarly irrevocable.

Parliament

53. This change also implies **reform of the parliamentary system**. While we think that the case for reform of the House of Commons is strong, we accept that the impetus for it has run out of steam in recent years. Without taking it off the agenda, for the time being we therefore assume no major change in the size, composition, or electoral basis of the Commons (other than the changes that would be brought about by a vote for Scottish independence).

54. But the state of the House of Lords cries out for urgent reform. A historic opportunity therefore presents itself: to reposition the Lords as, in effect, the federal upper house – and to reshape it in a way that represents the interests of a radically decentralised UK. Its fundamental purpose would be to embody and uphold the new constitutional settlement; and this purpose would define its powers.

55. The House would become an elected body, with the associated democratic legitimacy. And its electoral basis would be deliberately differentiated from the simple first-past-the-post system, thereby providing some balance to the inbuilt bias towards a binary adversarial structure in the Commons.

56. We would argue that the electoral basis of the reformed House should be the same PR system as is used for Scotland, Wales, and London – the so-called 'additional member' system. Around a quarter of the population lives in areas where this system is already used in devolved Parliament/assembly elections – i.e. the populations of Scotland, Wales, and London.

57. Whichever electoral system is chosen, important issues would stand to arise about the powers and functions of the reformed House of Lords.

    57.1. We would argue that the House of Commons should retain primacy with regard to taxation and spending. Hence the reformed House of Lords would – as at present – have no powers to vote and decide on money bills. Following from this, we argue for the continuation of the present convention (or at least understanding) that the Prime Minister should be a member of the House of Commons.

57.2. Conversely, and in consequence of the fundamental role of the reformed House of Lords in upholding the constitutional settlement, we argue that it should have the right to veto any proposed legislation that amends or impacts that settlement. The Parliament Act would therefore need to be amended to reflect this new veto power.

58. Other important questions would need to be addressed, and would also require appropriate revisions, including:

58.1. Whether to retain any appointed members and, if so, on what basis; and

58.2. The electoral term: the same as for the Commons – or different, and on a different timetable?

59. Suggestions have also been mooted that the House of Lords, and perhaps also the House of Commons, should be based outside London, for example in York. The main objection to this is that, away from the centre of executive government , the detached House (or Houses) would become mere talking-shops. The participation, and ready availability of Ministers and their officials, is the life-blood of the system. This is not (arguably) a problem that can be solved by video-links etc..

60. There is a separate, and arguably better, case for moving the whole capital, with all branches of government, to a centre outside London. This would have much inertia and special pleading to overcome. It is however worth noting how many of the world's larger democracies, either through historical happenstance or as a result of specific decisions, have their capital city separate from their main urban commercial hub. Only France amongst our major Western comparators is like the UK, in that the same city serves as both its capital and its primary commercial centre.

The Executive

61. **Ministers.** The number of Ministers should be substantially reduced, and Ministers should not be moved so frequently as at present. Apart from exceptional circumstances requiring earlier dismissal, no Minister at any level should serve less than about 30 months in their post, and preferably three years or more.

62. **The Civil Service.** Balancing legitimate ministerial priorities, while continually modernising delivery methods, requires a confident and properly resourced Civil Service. This requires strategic career planning and high quality training in management, as well as specific departmental expertise.

62.1. The ability of civil servants to train each other, as well as draw on external sources, is key to maintaining the collective culture of government, so that policy can be developed and delivered on the basis of shared values.

62.2. The abolition of the National School of Government (the former Civil Service College) in 2012 was a serious error, and the School urgently needs to be revived to provide a forum for systematic sharing of experience – about what works well and what goes wrong. This is more important than ever in an era when there is inevitably more movement in and out of the public sector in general – and of the central civil service in particular – than in the past.

63. **Special Advisers** should not be allowed to function as a separate layer of government, and it is important that civil service advice is sent directly to Ministers, with comments from advisers but without their being censored or even stopped. Ministers remain responsible for political and policy decisions, and need to have seen the relevant professional and impartial advice, if they are to be effective in the responsibilities for which they are accountable to Parliament.

64. Special Advisers also need to be required to respect the confidence of cross-governmental discussion, without seeking to use the media to present their own Ministers in the most favourable light.

65. **No. 10 and Departments.** It is notoriously difficult to get the balance right between No. 10 and Departments, and the roles of Ministers, Special Advisers and officials, within that balance. However, governmental success depends crucially on doing so. In the end, this is a matter of wisdom in the choice of appointments. But we believe it is now critically important to clarify and codify how a cohesively-run government structure is to function consistently with existing Parliamentary scrutiny and civil service neutrality.

The Judiciary

66. We strongly advise against imposing any general restrictions on the scope of judicial review, or generally the role of the courts as a branch of government. To do so could seriously endanger the rule of law. And the reforms of the wider constitution that we propose would, and should, give the courts a wider, not a narrower, role than at present.

67. Ministers should strictly obey their duty not to make public criticisms of individual judges, or the judiciary generally,

68. One way of buttressing the senior judges against further political attack would be to restore to the process of appointing them a larger element of participation by the other branches of government. This might be achieved by restoring a greater say to the Lord Chancellor, and maybe also by other ways of involving Justice Ministers and/or members of either or both Houses, with suitable safeguards.

    68.1. As mentioned above, the judicial and legal community are opposed to any involvement of politicians in the system. But they arguably do not yet perceive either the full implications, in this context, of the fact that the judiciary are one of the three branches of government, or the dangers which may increasingly threaten them.

69. The risk of allowing such involvement is of the slippery slope towards a US-style politicisation of judicial appointments on party lines. The risk of not doing so is of Parliamentary (and not just Executive) alienation by decisions of the Judiciary that are perceived to intrude on Ministerial government or Parliamentary sovereignty, with consequent risk to the rule of law.

70. It will be necessary to find the right balance on this. But these issues are unlikely to go away, especially if the UK moves towards a codified constitutional settlement.

71. In passing, we also advise against rumoured proposals to downgrade the Supreme Court, either by returning it to its former position as a Committee of the House of Lords or otherwise.

    71.1. The establishment of the Supreme Court was the delayed culmination of the reforms of 1873-5 that created the Supreme Court of Judicature. It is the highest, indeed the only, United Kingdom court, and it has, and will have, a key role to play in regulating present and future arrangements for devolution within the UK and within England, and for the Constitution generally. Of course that does not preclude reforms of its composition and procedures.

Central proposals

72. Our central proposals are therefore that:-

- *The United Kingdom should now move decisively towards a federal system of government.*
- *The new federal system should be the framework for a major devolution of powers and functions to the four nations, amounting to 'Home Rule'.*
- *A substantial devolution to the cities and regions within England, which should become federal regions in their own right.*
- *The new federal framework and governmental system should be embodied in a codified written Constitution or Basic Law, contained in an Act of Parliament.*
- *This Constitution should include entrenched clauses, especially and at least concerning its own amendment, and it should be interpreted by the Supreme Court of the United Kingdom.*
- *The House of Lords should be transformed into a democratic federal upper House, much smaller than at present, directly elected on the additional member system, and representing the nations and regions.*
- *The reformed House of Lords should have a veto on any proposed legislation that would amend or impact the Constitution or its working.*
- *However, the House of Commons should continue to have a monopoly on taxation and spending (except that portion which is devolved to the nations and regions).*
- *The House of Commons should also be reformed in its numbers, mode of election, and culture. However, this can await a second stage.*
- *Neither House of Parliament should be moved out of London unless the whole centre of government, including the central Executive and Judiciary, is also moved to the same place.*

73. We also make other proposals, important but in this context secondary, concerning the Executive and Judiciary.

Way forward

74. These conclusions are only the bare outlines of a radical reform of our governmental institutions. Many important elements of course remain to be filled in. But in their essence, as summarised above, the main conclusions form an inter-connected programme, which in our judgement should be considered, and implemented, together.

75. Initiating such a programme of reforms would clearly be a major task. This calls for a discussion far beyond the usual political and academic circles. But major political players need to be willing to take up the cause.

    75.1. The best case for doing so – urgently – is surely that it offers the most promising way, both to improve the quality of government across the whole United Kingdom and to persuade the nations outside England of the advantages of staying with the Union.

76. The United Kingdom government must of course take the lead in this, though a degree of cross-party agreement would be essential. But that can only be the beginning: there needs to be a constitutional commission of eminent experts, convened by Royal command at the request of Government in Parliament, with suitably diverse membership and an effective supporting team, with the multiple tasks of steering the project, organising the national discussion, reaching conclusions, and presenting them to Parliament and the public.

76.1. At every stage of this process, each of the four nations would need to be closely involved; and the results command the broad and continuing support of all the relevant representative assemblies.

76.2. Last but not least, the government of the United Kingdom would need to have the will and perseverance to carry them into effect. This may take some, but hopefully not too many, years. The true glory will be in continuing the task to the end.■