

# A New Union? Federalism and the UK



## Federalism is a hot button topic in the UK and internationally. But what does federalism mean? And could it work in Britain?

Paolo Dardanelli and John Kincaid investigate.

**F**ederalism is a contemporary buzzword, from established federations such as the United States and Australia to could-be federations such as the UK and the EU. Yet federalism is understood in different ways by different people and often carries ideological connotations, even though 40 per cent of the world's people live in countries with federal constitutions. But what is federalism? How do federations evolve over time? Is federalism relevant to the UK's future?

### What is Federalism?

The distinction between unitary and federal systems is a classic notion of political science, but what are the defining features of a federal polity? In essence, federalism is a constitutional device to divide and share powers between at least two entities: usually the federation as a whole, which governs the entire territory, and a number of constituent units – variously called states, provinces, cantons, etc. – that govern separate portions of that territory.

The division of powers reserves or grants to each constituent unit a degree of autonomy in certain matters so that policies enacted in one unit might differ to policies enacted in another, while policies enacted by the general government are uniform federation-wide. Such a division is typically entrenched in a constitution intended to protect the division and sharing of powers from encroachment by the general or constituent governments after the original federal settlement. Federalism's ability to combine system-wide unity and regional autonomy, makes it particularly appealing to countries having a high degree of diversity, typically because of their large size and/or long-standing ethnic heterogeneity. Although federal systems are designed to preserve varying degrees of autonomy for their constituent units, this autonomy is limited by the supremacy of the federal constitution.

This is enshrined in the principle of 'federal law breaks state law', meaning that federal law prevails if the two are deemed to clash. Hence, most federations have a supreme or constitutional court that serves as the key referee of clashes.

Although sub-central tiers of government are also present in unitary states and may be responsible for a great deal of policy delivery, federalism is distinctive because the constituent units of government have the authority to enact primary law rather than just implementing legislation decided at the centre. In other words, if both unitary and federal states can be more or less decentralised, the type of decentralisation in federations is qualitatively different from the type of decentralisation in unitary states.

### Varieties of Federalism

We can find examples of federal-like systems in pre-modern eras, but federalism as we know it today was 'invented' in the United States when its current federal constitution entered into force in 1788. The US model has influenced all other federations to a greater or lesser extent, particularly those of Latin America. Yet there is no single model of federalism because no two federations have exactly the same institutional architecture, let alone the underlying political, social, and economic conditions. Each federation operates in its own distinctive way while sharing a 'family resemblance' with all federations. Comparing the United States and Canada, for instance, is illuminating. Although they are similar in many respects, their federal systems are remarkably different.

A prominent distinction is between 'dual' and 'administrative' federations. In the former, epitomised by the United States and Australia, the general and constituent governments were intended to operate as independently as possible in what the Australian scholar K. C. Wheare called a 'separate and co-ordinated' fashion. The

implication of this separation is that the general government administers its own policies and therefore needs to build its own administrative apparatus or else provide constituent governments with grants-in-aid to carry out federal objectives. In the 'administrative' model of federalism, best represented by Germany and Switzerland, the two orders of government work together in an integrated fashion, whereby the implementation of national policies is typically delegated to the constituent units, rather than being carried out by the general government; hence, there is no need for a large central administration.

Another important difference is whether a federal system operates on a basis of symmetry or asymmetry. In some federations, all constituent units have the same status and powers (symmetry); in others statuses and powers vary (asymmetry). Classic federalism was intended to be symmetrical, and the older federations were symmetrical at their birth. Asymmetrical features, however, have been increasingly adopted in recent decades in both old federations, such as Canada, and, especially so, in newer federations and quasi-federal systems.

Linked to the differences between 'old' and 'new' federalism, the American political scientist Alfred Stepan distinguished between 'coming together' and 'holding together' federations. The classic federations of the United States, Switzerland, Canada, and Australia were 'coming together' federations because they were formed by a union of previously independent – or highly autonomous – political systems. Since World War II, though, we have seen federations emerge through far-reaching decentralisation whereby hitherto unitary systems transformed themselves into federal ones. Belgium and Spain are emblematic examples. They are 'holding together' federations because their adoption of federalism was rooted in a drive to prevent the country from falling apart through the secession of some of their regions.

Federations also vary in the extent to which the constituent units have a say in the policies enacted by the general government, typically through their representation in the

upper house of the national legislature, such as the US Senate and the German Bundesrat, and in the nature of the institutional channels linking the general and constituent governments, as well as the latter among themselves. This is commonly referred to as 'shared rule.'

Federalism is thus best understood as a set of principles and practices rather than a rigid constitutional set up. Ultimately, a federal polity depends on the voluntary willingness of all the parties to the federal bargain to work together cooperatively and respect each other's autonomy.

### How do Federations Change?

How the 'federal balance' – the division of powers between the general and constituent governments – evolves is a key question of federalism. Given the complex interdependence of policy areas and ever-changing economic, political, and social conditions, such a balance is always delicate and subject to multiple pressures for change during a federation's life. Some interpret the inherent dynamism of the 'federal balance' as showing that federalism is merely a stage in a trajectory towards something else, rather than a stable constitutional order. In a coming-together federation, where the dynamic of change is centripetal, the end point would be a unitary system in all but name. In holding-together federations, characterised by centrifugal dynamics, the end result would be the break-up of the polity into its component units, as happened in Yugoslavia.

Despite the importance of these questions, until recently we knew little about how federations change over time. No systematic, longitudinal analysis of centralisation and decentralisation across federations had been conducted. To address them, we undertook, together with six colleagues, the research project, *Why Centralisation and Decentralisation in Federations?* (See [de-centralisation.org](http://de-centralisation.org).) Principally funded by the Leverhulme Trust, the project measures dynamic centralisation and decentralisation across 22 policy areas and five fiscal categories in six major, democratic federations – Australia, Canada, Germany, India, Switzerland, and the United States – since their foundation.

Our preliminary findings show that most democratic federations become more

centralised over time, though not inevitably so. Canada has followed a distinct path; it was significantly more centralised at the outset in 1867 but experienced a mix of centralisation and decentralisation over time, resulting in little net change overall. Given that the other federations have experienced considerable centralisation, Canada is once again an outlier in being significantly less centralised than the other major democratic federations. In contrast with its peers, Canada has also experienced growing asymmetry whereby some (French-speaking Quebec, in particular) but not all provinces have developed their own policies in several fields, ranging from pensions to immigration.

Centralisation in the other federations has occurred primarily in the legislative sphere, meaning that, in more and more policy areas, the fundamental legal framework has come to be set by the general government and is therefore the same across the federation. In many instances, though, policy implementation has been left to the constituent units, particularly in the traditionally 'administrative federations' such as Germany and Switzerland. The constituent units have also retained fairly high fiscal autonomy, especially in Canada, Switzerland, and the United States. Outside Canada, the most prominent trend is for federations to become progressively more 'administrative' in nature.

Given that the autonomy to enact primary legislation is the defining feature of federations, this can be seen as a worrying trend. Some observers maintain that classic federalism is dead and that today's version is a pale imitation of the original. But others take comfort in the fact that constituent units in many cases retain considerable administrative and fiscal autonomy, suggesting that federalism has adapted to the circumstances of the modern world but remains alive and well. These divergent interpretations spill over into contrasting views about the desirability of retaining a vibrant form of federalism in which the constituent units retain considerable legislative autonomy. While many federalists bemoan the erosion of classic federalism and want to roll back centralisation, others contend that federalism should not be preserved if it is no longer justified under current social conditions, notably in the

United States. Not surprisingly, the nature and tone of the debate are very different in 'holding together' federations. While these are too new for us to be able to detect long-term patterns of change, Belgium and Spain, for instance, have remained on a centrifugal trajectory, and worries about their break-up are widespread.

### Federalism in the UK

What is the significance of the above for the constitutional debate in the UK? Federalism is often thought to be alien to Britain's constitutional tradition, to the point of being called the F-word. The prominent late-19th century constitutionalist A. V. Dicey famously pronounced that federalism is incompatible with the 'English' constitution. Nor need anyone be reminded, in the wake of the Brexit vote, of the UK's – especially England's – visceral opposition to any notion of a federal Europe. Yet, this is only one side of the coin. The other side is that the British bequeathed federations throughout their former empire, among them Canada, Nigeria, India, and Malaysia. No other European colonial power has been remotely as influential in spreading federalism across the globe.

Furthermore, the UK has never been a monolithic unitary state. Since the 1707 Act of Union, Scotland has always preserved a degree of autonomy in several matters on the basis of various arrangements that, if not strictly federal, were at least inspired by the federal principle of combining union-wide unity with regional autonomy. If federalism has thus always been relevant to the UK, never has this been truer than today, following further devolution of powers to Scotland under the Scotland Act 2016 as well as the decisive rejection of Brexit north of the border. The new Act expands and entrenches Scotland's autonomy and moves the constitutional relationship between Edinburgh and London closer to a holding-together form of federalism. Thus if the UK to a large extent already operates as a de facto federation, it does so very asymmetrically, as Wales and Northern Ireland each have their own devolution status while no regional governments exist in England.

This raises a crucial question: should the asymmetry be eliminated or should it be managed and, if so, how? What can we learn from the comparative study of federalism

to answer this question? To eliminate the asymmetry, one would have to set up either an English parliament or several English regional parliaments, each possessing the same powers as today's Scottish parliament and operating alongside a British parliament for the union as a whole. This would create a classic symmetric federation.

However appealing that might sound, either path faces formidable obstacles. The relationship between a British parliament and an English parliament representing 85 per cent of the population would likely lead to tensions and instability. In no existing federation does a single constituent unit account for such a high proportion of the population. While symmetry would be achieved in purely institutional terms, asymmetry would be recreated politically. Setting up several English regional parliaments would avoid that problem but would run counter to the fact that regional political consciousness is very weak in England, as reflected in very low public support for powerful regional institutions.

As classic symmetric federalism would thus be very difficult to introduce in the UK, asymmetry would have to be managed rather than eliminated. The experience of established federations suggests that three aspects are particularly important: a) representation of the 'peripheral nations' in the general government, b) inter-governmental co-ordination, and c) fiscal resources. The system would likely require reform of the House of Lords, creation of effective channels of co-ordination between Westminster and the devolved institutions, and replacement of the Barnett formula with a proper system of fiscal federalism.

## Conclusions

Federalism has successfully adapted to the modern world and is a vital form of political organisation, especially for preserving democratic unity in the face of human diversity. The variety of federal systems in operation today shows that federal principles can be put into practice in different ways. Like it or not, the UK is increasingly acquiring federal features, and the Scotland Act 2016 is a major step in that direction. The asymmetry inherent in the country's constitutional set up will have to be managed carefully if the Union is to endure. The question of

Scotland's representation at Westminster and its involvement in shaping UK-wide policy is especially important. The country can profitably draw from the experience of established federations in charting its own constitutional future.

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