

HOUSE OF COMMONS

oral evidence

taken before the

POLITICAL AND CONSTITUTIONAL REFORM COMMITTEE

**Prospects for Codifying the Relationship  
Between Central and Local Government**

Thursday 18 November 2010

Mr Roger Gough

Professor George Jones OBE and Professor John Stewart

Evidence heard in Public Questions 1 - 53

Members present:

Mr Graham Allen (Chair)

Mr Christopher Chope

Sheila Gilmore

Mr Fabian Hamilton

Simon Hart

Tristram Hunt

Mrs Eleanor Laing

Sir Peter Soulsby

Mr Andrew Turner

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## **Examination of Witnesses**

*Witness:* **Mr Roger Gough**, Councillor, Kent County Council, gave evidence.

Q1 Chair: How are you, Roger?

Mr Gough: I am well, Chairman.

**Chair:** Good to see you.

Mr Gough: Thank you very much.

**Chair:** You're among friends. We're trying to fact-find, and we'd like to pick your brains, particularly on the international aspects of local government/central Government relations. I've carefully read your paper, which is extremely helpful. Thank you so much for that. I know lots of colleagues have questions for you. Would you like to begin by telling us an outline of your views over a couple of minutes or do you want to plunge straight into questions? We're happy with either.

Mr Gough: Maybe just a couple of very brief observations, Chairman.

**Chair:** Please do.

Mr Gough: In the paper, most of which was written the best part of two years ago, one of the things that emerged from that-and, again, I'm probably not saying anything that's not already in there-was there's no absolute localist arcadia if you look round certainly the countries that were in our peer group. Many of the problems that we would see from the point of view of local government in this country are found in other places. So some people have had reorganisations forced on them; some people have had financial burdens dumped on them; some people have experienced the equivalent of rate capping and so on. But the combination of factors that you get in this country is, I think, unusual.

Certainly in terms of the discussion that I imagine you want to have today, I think what, to me, was important in thinking about it was looking at the picture as a whole. So the constitutional element was certainly important. I think probably the biggest single element was local government having some sort of place at the table that is linked to that, but not necessarily identically the same. So I think during the days of the last Administration, I probably would have referred to it as a respect agenda. I think now the phrase is "no decision about me without me". But, either way, it's that sort of thing that you would seek to apply and there are a number of examples in there as to how that works elsewhere.

I don't think you can transpose any one model across. I think it's more a matter of trying to get a sense of how things come together in particular systems and then thinking about how that might work within ours. But the whole range of things one is thinking about-the constitutional position, the seat at the table and any interaction with a number of other points like finance, performance management systems, the presence at the centre in the localities and so on-I think in a way you have to look at all those, to some extent, as a whole. I'll leave it at that, Chairman.

**Chair:** Roger, that's very helpful. Simon, if you can start us off?

**Q2 Simon Hart:** A quick question. The fact that we're having this discussion at all I suppose is an implied recognition that codification is necessary. I suppose I'm starting from the position of asking whether it is necessary. Do you think it is necessary and are there any alternatives to the sort of models that we're talking about? In the same breath, I just simply raise a question about how this works in the context of devolved Parliaments, too-particularly, in my instance, the Welsh Assembly-and whether you had views on that?

**Mr Gough:** Whether it's necessary is something one could argue because it's almost a question of what you're trying to achieve. I think certainly if you want to move away from the kind of imbalance that we've seen over a long, long time, you do need to make the relationship between centre and locality more equal, and you need some way of doing that. Now, I think your colleagues on the Communities and Local Government Committee, go back to last year and the last chapter in their report was very much about the role of Parliament in doing that.

I think if you're trying to think of ways in which you could make some sort of greater formality-whether one calls it codification is an interesting question, given that we're not necessarily talking here about the wider issue of a written constitution or whatever-then the role of Parliament becomes very important. One of the various things that we talked about in the summary at the end of that report was very much that it was a matter for looking at maybe some sort of joint committee; looking at the balance, looking at measures that might affect the balance, and giving local government not a vote but a voice on that. There were some analogies you could draw from overseas for that. So, to me, that kind of thing, giving the place at the table, is probably the most important element. You would obviously want something to refer to almost for that committee to work on, which is where some sort of resolution, some sort of statement by Parliament, would probably be the starting point for that committee's work. So I think that's where you'd need something of that kind.

**Q3 Simon Hart:** Do you, in this instance, therefore, see the Welsh Assembly as central Government or local government?

**Mr Gough:** I would see it as-forgive the weasel words-in between. One of the points we make in the report is, if you look at federal systems-and we don't have an explicitly federal system but you can argue it's moved in that direction-they are not necessarily always kind to local government in the strict sense. Certainly, if you take Australia and Canada, they have quite a restricted role for local government. Now, we focused quite consciously on England, simply dealing with that central/local relationship. So far, of course, the question of what happens elsewhere we left alone. But I think you could well look to some greater degree of formality on the relationship between central and national or an intermediate tier of Government in that way, but that was not something we particularly addressed.

**Chair:** Are you happy with that on devolution, Simon?

**Simon Hart:** Thank you, for the time being.

**Chair:** It takes you far enough? Yes, okay. We can come back to that. Fabian, I think you're interested in some of the international comparators.

**Q4 Mr Hamilton:** Councillor Gough, I'm told that you have a big interest in models in other countries, and the only country I know almost as well as Great Britain is France. My question is this. Can we have a formal relationship between central and local government, which I certainly believe is necessary and important, without having a written constitution along the lines of, say,

France or other countries, indeed? In France it's a very, very clear relationship between the centre and the locality and never the twain shall meet. You can't cross that border without serious trouble. Can we achieve that in Great Britain, or at least in England, without having a written constitution?

Mr Gough: I suspect you know France better than I do, so whatever I say about that I will say with some trepidation. But at one level, you can't have that same degree of, if you like, entrenchment if you don't have a written constitution. That's just, to my mind, an unavoidable consequence. There have been some suggestions-and I touched on it, I think, in the report. I haven't revisited the issue, but Ferdinand Mount, nearly 20 years ago when he was writing his book *The British Constitution Now*, was interested in the idea of super majorities on some constitutional-type issues, in which he included the powers of local government. One could look at that as a measure but, again, it's not something which I particularly explored in the report.

So I think you can't quite do that. What you can do is, if you like, throw quite a lot of sand in the machine. In other words, at present, it's been relatively easy for central Government to change the rules of the game very quickly indeed and, of course, has done so under Governments of both parties-perhaps we should say "all" parties-over the years. So there are ways-and what I was thinking of in terms of a resolution followed by a joint committee with a local government voice would be a way of doing that without necessarily going all the way to a written constitution. You may disagree with me and, again, as I say, you know France better than I do.

My reading of it was that the written constitutional provisions about local government in France were only part of the picture as to why local government operates in the way that it does. Part of that is to do with the power of the commune, certainly within the Senate. It's partly to do with the interaction between national and local politics, with almost every national politician having that very powerful local base.

Q5 Mr Hamilton: Well, I was going to come on to that, and sorry to interrupt you on this. But one of the ways that France achieves it, and I guess other countries do as well, is to have that representation from local government in the second Chamber. Is that something you'd envisage for this country?

Mr Gough: We did argue for that in this particular report. Now, I think at the same time I seek to be realistic. Let me just answer the point of fact first and then come back to that. Yes, in France I think that's a very important dimension. In Germany, obviously it's the intermediate tier; it's the Länder which have that representation in the second Chamber rather than local government. Local government has a voice on issues that affect it. It has a certain amount of constitutional protection but, again, as I said earlier, federal systems are not always so kind to purely local government. So France is the most distinctive in having that role and there are others. You can have upper Houses that have a territorial dimension but aren't particularly linked to any form of local, or indeed even subnational, government in the areas they represent. So take Australia; the Upper House there is another set of national politicians who happen to be elected on the basis of the States. So I think the French model is one way of doing it. It's not the only way by any means. I think I'll leave it there for a second.

But just to come back on the point of whether it would make sense here; obviously I think there's a case for saying it would be very, very desirable. Now, I deliberately tempered my wording around that in the conclusion to the report, partly out of a sense of realism. Firstly, when I wrote that report nearly two years ago, Upper House reform appeared to be one of those things everybody agreed about in principle and nobody was ever going to deliver in practice. After all, the 1911 legislation

was supposed to be temporary, wasn't it? Things are perhaps a little different, given the Coalition commitment on that.

But I think, again, you have to say that Parliament, in the form of certainly the Commons, has worked long and hard over the years to achieve a degree of agreement-it's clearly not universal but a degree of agreement-about a particular model for the Upper House that does not involve any territorial dimension. It's about basically having a set of people with a different mandate, a three-term mandate, not running for reelection, all that side of things, and, therefore, approaching things in a different way from the Commons. I think it would be a brave man who would think that, having tried to get even to that degree of agreement and seeing whether that could be progressed, you'd get anybody being willing to unpick that.

That is why having put that in-because I thought it's a worthwhile idea-I then said, "Well, let's look at some other options as well", which is where I came back to the point about the Joint Committee of the Houses and so on. Where the Upper House could play an interesting role, too, is that the more you have benchmarks to look at what is or is not a reasonable way to operate the centre, to operate vis-à-vis the localities, the more likely it is probably that an Upper House would question things that the Government did that went against that.

Q6 Mr Chope: Can I ask, isn't there a problem at the moment that too many Members of the House of Commons are basically overgrown local councillors and, as long as we have that situation prevailing, we are not going to be able to restore confidence in local government itself? Certainly, trying to entrench a whole lot of local government interests in the other House wouldn't achieve anything. Do you agree that there's a problem with a number of MPs usurping the role of local councils, trying to score party political points on what's happening in localities? And if you think that's a bad thing what, if anything, do you think could be done about it?

Mr Gough: Well, I think I'd be nervous of making a general claim about Members of Parliament, particularly sitting here, but clearly the role of MPs has changed a lot. I think many people here will know this much, much better than me. In the case of my own experience, I represent a county council division in West Kent. I'm in the Sevenoaks constituency, so Michael Fallon is my MP. I would say in our case we have quite a good working relationship where it happens to be that, of course, the MP will interest himself, in this case, in what goes on. If he thinks the county council, or indeed any other council, is doing something that he disagrees with, he will make it clear.

Constituents, I think, very often tend to take an across-the-board approach. In other words, very often they will raise an issue with me and they will raise an issue with Michael and possibly with the district as well. And Michael will work with us but I think does not see himself as usurping the role of the local council. One question that has been on my mind in talking about this parliamentary solution is: is it what MPs would want? Because there's no doubt the role has changed in the direction you describe and, to that extent, MPs may feel that entrenching local government weakens part of their franchise. I would hope not, but I agree with you, it is a risk. Frankly, in one sense I think you are probably better qualified to judge whether MPs can be willing to accept that than I am.

Q7 Chair: I just want to get you back to your very specific area of expertise, Roger: the international comparisons. Is it true to say that in virtually every other western democracy there is some form of codification and that probably ours is the weakest of all the democracies in western democracies?

Mr Gough: It's certainly well at that end of the spectrum. If you think of purely local government, not necessarily. If you take the federal systems, take Australia and Canada, then certainly at a national level any guarantees for local government are pretty limited. It's very much read as being a matter for the states or the provinces or whatever. I think what's unusual with this country is you have a combination of a country that is not federal, at the same time does not have a written constitution and is of a kind of intermediate size and has perhaps unusual combinations of size in terms of the size of local government units as well.

So I think it's not simply a matter of, "Are we the only ones without a written definition?" But rather that's part of a picture and there's three or four different elements to it that, taken together, mean that you have, as I say, an unusual degree of ability for the centre to change the rules. Now, some of the complaints that in some federal countries local governments make about state government, or Länder or provincial government or whatever, would sound quite familiar to us. So it's not quite as bald as that but I think that takes us a fair amount of the way.

Q8 Chair : The test, I guess, is-and you touched on it-how much the centre has the ability to change the rules over local practice. I would have thought, on that scale, everyone else in the democratic family has some sort of protection, whether it's at state level or federal level, whereas here there seems to be no bulwarks against, if you like, the whim of whichever Government is elected. This is not a party question.

Mr Gough: No, it's not.

**Chair:** This applies to all governments.

**Mr Gough:** Yes. Again, I would hesitate to say for certain "absolutely nobody"; but as a general principle, yes. There's no doubt that, as I say, federal countries, while they're not a friend necessarily of local government, certainly provide a bulwark against the centre, and usually you have defined relationships there. So, in that sense, the centre at least has less scope to aggrandise. If you take many of the other countries then, yes, there are rules or approaches and also, very often, referees, if I could put it that way. I think that's quite an interesting dimension. If we take the Netherlands, which in some ways has been closer to us, local government has felt quite put upon over the years.

There's a mention in the report of something that was pretty much like rate capping in the Netherlands. You've had the centre in many ways quite active in the localities. That said, what's interesting is that when they reached a degree of agreement-I think it had the rather clumsy name the Code of InterAdministrative Relations-a few years ago, it's the Council of State, a body a little bit like the Council of State in France, that had the scope to police that, to observe it and so on. So I think quite an important point when many countries are different is you get somebody else who has the ability to at least comment on it, if not indeed blow the whistle.

Q9 Chair: And to reconcile.

Mr Gough : And to reconcile.

**Chair:** Because there are clearly, quite legitimately, different interests but there's some form of separation of powers, if you like, or some form of arbitration where reconciliation can take place between two quite legitimate opinions.

Mr Gough: If I could just add one point?

**Chair:** Simon, did you want to come in on this?

**Simon Hart:** Yes.

**Chair:** Let Roger just finish his point and then I'll bring you in.

Mr Gough: I think in some cases, also, the reconciliation or the more equal relationship almost arises out of a question of administrative capacity. So you take the case of Denmark. There is some stuff in the constitution that underwrites that. If you look at the CLG Committee's comments when they visited Denmark, it was clear that the Danish local and national politicians took that constitutional underwriting quite seriously. Now, that said, that hasn't stopped central Government in Denmark carrying out, over the last 40 years, two quite sweeping local government reorganisations. But what you do find is that, because local government there has that as a backstop and has the administrative capacity to carry out a huge range of public functions-very, very, wide indeed-almost by definition the negotiations between the two sides are more equal than they would be here. So I think there are a range of things that can underwrite the ability to ensure that you have less unilateralism on the part of the centre than you have here.

Q10 Simon Hart: I am sorry to go back to the Welsh headache, but you've just thrown up something that is quite significant for places where you do have local authorities who are, in many respects, bound by the decisions not only of central Government but by the Welsh Assembly, too. We're in a situation in Wales at this very moment where you have one coalition of parties in Cardiff that has a very different local government agenda from the coalition of parties in Westminster, which is essentially almost resulting in a stalemate at the delivery end. I suppose the question is: does and can codification deal with that?

Mr Gough: Well, it could deal with it in terms of establishing where the authority on that truly lies because what you do find is that, in Germany, for instance, local government structure has some guarantees. Local government's existence and some of its core roles have a degree of guarantee under the constitution. But then also it is for the Länder to carry out any reorganisation but with reference to those points in the constitution. What that means is on the one side, different parts of Germany have, for instance, very different sizes of municipalities and so on. In north Germany they've tended to move more towards fewer larger units; in southern Germany, much less so. But at the same time there is some degree of backstop. In that case it goes back to the Constitutional Court and there was a case that I referred to in what was formerly East Germany where it was stopped. But I think you have a greater formality of relationships there, which does, therefore, mean that-I'm not familiar with the Welsh situation that you've described-you wouldn't have that degree of deadlock because there would be a clear place where the issue belonged. From local government's point of view, the stronger position would undoubtedly rest with the subnational government, with the Länder, but the constitution does give them some degree of protection. But it wouldn't be the Federal Government getting involved.

Q11 Simon Hart: So it is a sort of qualified yes?

Mr Gough: It's a qualified yes, I think. It probably is fairly much a yes.

Q12 Chair: I don't know whether you'd agree with this. Rather than looking for a clear answer through the structure that gives you a yes or a no, what a degree of arbitration or codification might give you is a means of reconciliation; in other words, a place where people know they can go. Now, it may be the court but it may be other possibilities. It doesn't have to be, "I've read the book and

this is mine and not yours. I've read the book and I think we need to talk about something along the overlap".

Mr Gough: I would agree with that and I think it's also about having the place at the table, which that sort of process, whatever it might be, might support. Because, as I say, if you go back to some of the examples we've talked about, the pure wording in the constitution is only, in most of the countries we've looked at, part of the story. It is how those relationships are played out and where they're played out. Now, referring back to what's in the constitution will be part of it but it will only be part of it.

Q13 Mrs Laing: Looking at the other aspects of the different levels of government that we're considering here, you make some interesting comments about the way in which your county council interacts with your MP and so on, and in Germany how there are different sizes of units in the north and the south. Do you have any observations about the piecemeal situation in the United Kingdom, as to whether there are unitary authorities; whether there are two levels of authorities; in some places, there are four; where there is devolved national government, you can have five levels; add on Europe. As a very general question to start with, any observations on the piecemeal situation?

Mr Gough: Well, "piecemeal" is the word and, of course, it has evolved through a series of sometimes quite whimsical reorganisations that we've seen over the years. So, I think there's been a time when clearly the default position within Government was-I wouldn't say steady-an intermittent march towards unitaries and I think you created a whole batch of generally smaller unitaries in the 1990s, and we've had a few accretions since then. So, yes, I don't think anybody, frankly, starting de novo, would create the kind of patchwork we have at the moment-and it is complex. Now, I think an element of complexity is inevitable. Point one, although we do have this mishmash, we do not have, for example, a vast array of councillors. In fact, I think we have fewer councillors per head, or more heads per councillor or whatever it is, than most other comparable countries.

Q14 Mrs Laing: Do we?

Mr Gough: We do. And a degree of mishmash is evident in France. President Sarkozy is having an interesting if perhaps slightly partisan go at rationalising that at present. But in France you've had a situation where you've had, since the 1980s certainly, three tiers of what are considered to be local government. Now, admittedly there is a pretty uniform structure across the country, but there is a tendency then for everyone to do a bit of everything, which is where the accountability and clarity issue has arisen. So, yes, there is no doubt that the situation we have is messy. I would hesitate to argue for trying to rationalise it in one go because everybody has had huge efforts at doing that and, in fact, the end result has usually been to make it worse.

Q15 Mrs Laing: I cannot but agree with you there. I was going to say it's comforting to know that other countries are in similar positions, but it isn't really because that is astounding. Do you mean that even when you take into consideration county councillors, district councillors, parish councillors, town councillors, that we have fewer per head than most other places?

Mr Gough: We do. I'm not sure the figures usually include town and parish councillors. But I suspect even if you did include them you would not come to a radically different conclusion. I think what is peculiar about this country is not so much the number of councillors but this whole combination of systems, and you need to spend a bit of time thinking about that. Lots of countries have twotier or even more than twotier systems. Particularly if you think of more dispersed rural areas, there are very good reasons why you have that. If you take Germany, it's interesting that you have a combination of unitary and two tier. Below the regional level, you have some places where



you will have what usually translates as counties, Kreise, who will have the responsibilities that, in effect, the municipalities below cannot take up, but some of those municipalities will be, in effect, unitaries because they can take on all that role. So they're basically a bit like the old county boroughs in one sense. Other countries will have some things which are similar but I think, because you've had these two or three goes at reorganisation over the years that have then marched a bit of the way and then kind of petered out, it's that very odd patchwork that you have here that is, I think, distinctive.

**Mrs Laing:** Did you say "distinctive"?

Mr Gough: Distinctive, yes; the very odd patchwork that you have in this country.

**Q16 Mrs Laing:** I thought for a moment you were going to say whether it was good or bad, but we won't put you in that position. Distinctive is-

Mr Gough: No, I'm very happy to say. I don't think it's good but, equally, I think, to some extent, we are where we are and it's better to be looking at the kind of issues that I think you are debating in terms of that relationship than it is to be trying to look at yet another reorganisation.

**Q17 Mrs Laing:** Looking at the other side of Christopher Chope's question a short while ago, and the way in which the representatives of different tiers of Government interact with one another. When you're dealing with a county council-this is a sweeping generalisation-by and large, most people who are elected to the county council have a pretty responsible position and we know what they do and for what they're responsible. I would suggest that the interaction with Parliament and what a Member of Parliament does is not a problem because there are distinct areas of responsibility. But when you come down lower than that, would you agree that the areas of responsibility and accountability are not at all clear? Christopher made the remark that some Members of Parliament are-I don't want to misquote you, Christopher-larger district councillors-

**Mr Chope:** Overgrown.

**Mrs Laing:** Overgrown, is it? I'm trying very, very hard to be diplomatic here. Overgrown councillors. What is a Member of Parliament supposed to do if a constituent comes to see you with a problem? And I'm talking here about the practicalities, not the structure. We know what the structure is meant to be but now I'm talking about what happens on a day-to-day, week-by-week basis; if someone comes to see you asking you to solve a problem that the Member of Parliament and everyone else knows is a matter for the district council?

Mr Gough: Well, partly I must say I'm conscious-I've reflected since I spoke-that I didn't answer Christopher Chope's question desperately well. Let me first of all answer yours and then try and work my way into addressing that one a little bit better than perhaps I did.

Firstly, there will, I think, always be a confusion of mandates and that is inevitable and it's not just between Members of Parliament and councillors. It's across councils. It is one of those things that I think we all, to a degree, live with. And if a Member of Parliament has someone come to them then I think it is absolutely right and inevitable that they will take it up. The question of how they take it up is another matter and I think very often an MP can take it up with the council. They're entirely within their rights to express a view as to whether they think the council is doing it well or not. In the end, the fact is that it is the council that can deliver on it, not the Member of Parliament. So, in that sense, if they get themselves involved I think that's a legitimate part of their mandate. Whether

it's always the best use of their time is, frankly, for them to decide, but I think that's a legitimate part of the mandate.

Going back to the point that Mr Chope raised, because as I say I'm conscious I didn't necessarily answer it very well, it would be quite possible to separate out the question of local government having greater strength *vis-à-vis* the Executive, compared with the question of whether MPs involve themselves locally. I think MPs may not always necessarily see it that way, in the sense that they may feel nervous of the idea of local government being strengthened. But in many ways, even if you had a local government which was less interfered with by the centre, that wouldn't stop MPs doing precisely the kind of thing that you've described. I think, as I say, it's a legitimate function for them to do so.

Now, of course, it might make a difference if you transferred functions. In practice, if we look at what's happened with the quango slaughter recently, there's not been a great deal that's headed towards local government. It's tended more to go back into Departments, with a partial exception perhaps around the RDAs and LEPs. If you did, however, have that sort of transfer, to some extent there would be issues involving the MP. You come to the MP because they would then take something to the Environment Agency or whatever, and now it would go over more towards if you came to the MP, the MP would go to the council and the council would have the point of decision on it. So there would be a change there but I don't think it would be an unbearable undermining of the MP's local role. I think it's fair to say that change in the local role over the last 30 to 40 years has been for many MPs, I think, a very positive thing.

Q18 Sir Peter Soulsby: I want to try out on you something that I'm going to raise with the witnesses that are to follow you. I just wonder whether you would agree with me that there is a fundamental problem in all of this. All Governments will espouse localism, but in fact there are large parts of central Government that neither value nor trust local government. That culture of mistrust makes it very difficult for them to let go. I'd welcome your comment.

Mr Gough: I would agree with that entirely and I think this comes to the question of where there has to be the political will to deal with it and perhaps the role of Parliament as opposed to Government. I don't particularly want to make comments about CLG in general, but certainly if you go back a couple of years when there were the capability reviews, CLG did not emerge from that as one of the biggest beasts in the jungle, if you like, and there are other Departments that have a different view.

Two points on that, though. Just from observation quite recently, one which is quite interesting is health. It's fair to say the Department of Health historically was probably one of those which took a pretty strict view *vis-à-vis* local government. The reforms currently mooted in the White Paper—we'll see what exactly comes out in the legislation—involve quite a significant change in local government's role *vis-à-vis* health, and Department of Health officials have started to respond to that. Now, it's not to say that there's been a Damascene conversion or anything of that kind, but that does shift the landscape a little bit in that area.

The second area that is quite interesting is Treasury. I'm speaking today with my Localis hat on, rather than my Kent County Council hat. But, drawing a little bit from my experience of that, if you go back to the Total Place initiatives, which were very much around in the last year of the previous Administration, it was quite clear that the Treasury was quite often on the side more of that localist approach. Because it could see the sheer wastefulness of much of the duplication that took place and the need that, if you were going to try and tackle that, you needed accountability to be held somewhere else—accountability for dealing with those issues—because you couldn't do it through a series of Government Departments or their agencies operating rather separately but down to a local

level. So I think there is a little bit more perhaps going on in central Government than one might think. But no, there's no doubt that there is an issue as to how the centre has often felt about local government. Local government would say, "Well, take a look at what we've delivered over the years", and, "Motes and beams", that kind of thing, I think, probably. But yes, that is an issue.

One interesting question, which again you'll be much better qualified to judge than me, is what attitude MPs will take. Are MPs interested in taking up this particular mantle? Looking back at the CLG Select Committee report last year, some MPs at least, cross-party, were clearly very interested in doing so and in seeing a role for Parliament in doing that. But that, I think, is where the counterbalance could arise.

**Q19 Chair:** Can I interrupt and say sometimes it appears, from the point of view of Members of Parliament, that people in local government don't actually want to push the boundaries back. I'm talking about political leaders and senior officers. They seem quite content to be dictated to by the centre and in a way that, in France or Germany or Italy or America, would either be illegal or would have tractors blocking the motorways or would result in uncontained laughter in the streets of the town or the municipality. It seems to me that the ambition that's lacking isn't from Members of Parliament. It is from local government itself. Would you agree with that and, if you do, what on earth can people do to give some motivation and spine to local government to ask for a little more freedom for itself?

Mr Gough: It's a sort of Stockholm syndrome, if you like, that you're describing here. I think it does exist. I don't wish to bang our own drum too much; I don't think it exists in Kent. We're accused of many, many things, but modesty and being overly compliant is not usually one of them. What I think we do sometimes get is that some elements within local government offices have become very used to certain reporting lines being what they are and, yes, I think there is an element of people feeling sometimes a little uncomfortable. There are one or two anecdotes about things that have happened since the election where Ministers have turned round and said, "You're on your own", and people have said, "Oh, but there's going to be some guidance, isn't there?" So there is an element of it.

I must say, in terms of people I know within local government-I'm thinking wider than Kent here-I wouldn't think of that particular criticism as being true across the board, certainly. There are many who I think do have strong ambitions and I think where we may have an opportunity is that, bit by bit, it's been growing. Again, if you take what happened under the last Administration, there was a time when-and again, this is not being party political because it started under the Administration before that-there was this drive towards centralism. I think it peaked in about 2003 or 2004 and there was a slow but steady reappraisal that took place in the years after that.

It never went as far as many of us would have liked it to have done. But what was interesting was that did provide opportunities for local government then to raise its sights, start to push back a bit. And I think there were quite a lot of signs-particularly again if you take things around, for example, the Total Place pilots or whatever-where that was happening. So, yes, I think what you describe is a risk. I think it's there. But I think you only frankly tackle it by an iterative process. If you give local government more freedom you'll get more ambitious people within it; more ambitious people will ask for more, and so on and so forth.

**Q20 Sir Peter Soulsby:** When dealing with the devolved Administrations, the Government are now getting used to saying, "That's nothing to do with me, that's something to do with the devolved Assemblies". Do you think that there's going to need to be a similar change in attitude if local government is going to be empowered to have real significant variations in levels of provision and,

when tackled with the postcode lottery type argument, Ministers are going to have to need to respond by saying, "Look, that is generally something that is devolved"?

Mr Gough: Well, yes, I think that's absolutely right. One area where you could see an interesting issue on that is something like libraries. It was partly a judicial process but during the last Administration, the Wirral went down a particular programme vis-à-vis library closures and that was, in effect, called in. You had the Wirral judgment and so on. Now, there's no doubt that councils across the country, particularly in the current financial climate, will be looking at that sort of element of provision. So that's an area where, for example, it would be very interesting to see whether Ministers are willing to have a selfdenying ordinance, if I can put it that way.

Q21 Sheila Gilmore: My recent experience of some form of writing up an agreement lies with the concordat the Scottish Government has entered into with local government. One of the results, arguably, is that it's weakened local government rather than strengthened local government-I don't know how familiar you are with the situation-which I think perhaps has something to do with the fact that, at the end of the day, the purse strings are held so powerfully by the central body, which in this case is the Scottish Government. So, in theory, some things have been devolved further-ring-fenced funds have been un-ring-fenced with a great fanfare of freedom-but fundamentally I think a lot of people are feeling that it's imposed constraints. We see that the Scottish Government has just announced its prospective budget yesterday for next year and, I think, probably has local government by the whatever you want to call it, because what they've said is, "You could get a 2.6% cut in your budget providing you do this, this and this. And if you don't do that, then your budget cut is going to be 6%". So is that a result of what they're doing in part?

Mr Gough: Again, I'm not close enough to that relationship within Scotland to make a precise judgment about that. I would say a couple of things. I think that you need to look at two things within any sort of concordat. One is, at the risk of sounding like a cracked record, the question of how it's policed; who in the end can be referred to on it and so on. The second, which comes back to the point I think you were touching on, is money. If you take the concordat that we had between the LGA and Central Government here in 2007, I think just about everyone would say that the impact that's had subsequently has been minimal.

I don't think it's had an effect of making things worse in the way that you're suggesting may have been the case in Scotland, but it certainly hasn't made things any better; for two reasons, I think. Partly it is again the question of, "Well, okay, fine. What are the actual teeth to get anybody to look at how things work in practice?" You can turn round and say, "Well, you're not acting in accordance with that, but so what?" And the second thing was just before signing that, there was something of a standoff around the money issue, and what you ended up with was a set of weasel words. It was drawing partly on the European statement of local self-government, which theoretically has been adopted in this country. That has, within it, a commitment to buoyant and diverse local government revenues. Central Government made sure that did not even indirectly find its way into the concordat there.

So it depends very much, frankly, on what's within the text of the concordat. Without knowing the Scottish situation better than I do, I can't particularly judge that one, but I would say that, without having some element of the money issue addressed within it, any agreement of that kind at the very least is unlikely to make things better.

Q22 Sheila Gilmore: Obviously the bulk of finance to our local government-I'm not sure if it is always the same elsewhere-does come from central Government. I'm thinking of Scotland where, it's 75%: 25% or thereabouts. But if you then impose restrictions on what you can do with that

25%, you're further limiting it. Business rates are pooled and redistributed on a fairness basis. There's a justification for that, but it also causes difficulty for a local authority that wants to be quite dynamic and do different things and maybe is pulling in a lot of extra income. For instance, we get the argument in Edinburgh that we have a fairly buoyant tourist and cultural city. The council, and indeed the Scottish Government, put money into some of these things to pump-prime them and get them going, but at the same time doesn't necessarily get back that actual recompense. So is it fundamentally about money?

Mr Gough: I think that's an important part of it. As I say, I mentioned in my opening remarks, there are about half a dozen parameters that you have to look at together and the money element is a very important one. Two things I would say: one is, on money, there are so many different ways of looking at it and simply the proportion of money that you raise out of what you spend is only part of the story, because one of the most self-financing groups in local authorities in my study was in Australia. That's because they don't do very much relative to other local governments in terms of their functions.

So they have a narrow tax base but a relatively limited set of functions. They look fine in terms of local financial autonomy, but that has its limits. So I think you have to look at it in terms of, yes, that degree of self-financing, the buoyancy which business rates might help address, and diversity of funding as well. But I agree with you. If you end up with a situation where you are very dependent on a higher tier for your finance and all sorts of conditions can be imposed on that then almost by definition you are very, very constrained. So, yes, it's not all about or only about money but money is quite an important part of it.

Chair: Of course, central Government doesn't have its own money. It initially takes it from the local populations through income tax and other revenue-raising forms and has abducted the revenues to itself and then decides what it's going to give back. So it's not a case of whether they're going to be generous or not; the original theft, perhaps, is the place that we need to address some thought.

Q23 Mr Turner: You seem to have come up with reasons why we should make a change in terms of explaining what happens. The problem seems to be that once you get into the detail there are all sorts of reasons why not only it's not possible to do it but it's almost impossible to explain why you do it. To give you an example: you've just answered the question almost in the amount of local discretion. A small local authority, a small area of responsibilities, can look very good, but you find it doesn't have many opportunities to do things. But can I try you with two other variations? At the moment, we have three examples. We have education, health and DECC. Some of those are going towards the local authority and some are coming away from the local authority. So, for example, health, or at least part of health, appears to be going towards local authorities at the moment.

Education appears to me to be going away from local authorities and, just to get this clear, it's also going away from national decisions. It's going to individuals and schools. DECC seems to me to be very interested in covering an aspect of planning law, which for all other intents and purposes lies with communities and local government.

**Chair:** Could we get the witness's view on that?

Mr Gough: In terms of what you're describing so far, I entirely agree with what you're saying. The travel is in different directions. I think one feature that you see with the current Administration, compared with the previous one, is a quite different approach to the local architecture, if I could put it that way. So the previous Administration, I think, in its later stages-having gone through what you might describe as a "command and control" mode in particularly the early 2000s-started to move

more towards this big focus on partnership. So you saw that with the Total Place initiative, you saw it with the "duty to cooperate" in the 2006 Act and so on. The present Government has not wholly abandoned that. We don't talk about Total Place anymore but we do have community budgets or place-based budgets or whatever. So there's an element of partnership there and health will require partnership but, of course, it will be a partnership not with a PCT but with a set of GP consortia.

You will have an elected police commissioner. Schools are moving in the direction that you described. I think, in one sense, the schools thing is not quite all that it's always portrayed to be by many commentators because, for example, we're talking about a centralisation of funding, money going direct to schools. The truth is ever since we've had ever greater school selffunding and certainly since we had DSG, in Kent, we used to beat our chests and say, "We have a £2.5 billion budget".

The truth is a billion plus of that sits in our account for about three weeks and then whizzes down to the schools. So if you move to direct funding of schools from the centre, if that's what's talked about, I'm not persuaded that's quite such a radical change as it is portrayed and local authorities have not, in truth, run schools for years and years, if indeed they ever did. But, nonetheless, the direction is as you've described. So I agree entirely with what you're saying. I'm not quite sure what the next stage of your argument is, but I agree with it.

Q24 Mr Turner: I'm not sure. But the next stage or what I was going to say anyway, if that's of any value, is that it's quite good for yourselves in Kent, where there's a general agreement about the way in which you are going and-although I have no information about this-it's probably true in the north-east that it's clear what happens with Labour councils and Labour Members of Parliament, and it's going to go on like this for 25 years or 50 years or whatever. The problem lies with those people who have one lot of people in control today and another lot who will be in control tomorrow, both at local level and at national level. So I don't understand how you can get an agreement, especially taking into account what we've just taken into account; there's the functions and now there's the politics and they both seem to me to be impossible to explain.

Mr Gough: Firstly, I don't think one would envisage-I wouldn't envisage-codifying exactly the functions of local government. Again, if you look at many of the constitutions that we talk about, what they have in them is usually fairly general in terms of the pure constitutional provisions. The peer group that we looked at in the report-South Africa was the exception, and South Africa is trying to do something quite distinctive because of the historical legacy and so on. In South Africa you do have quite a lot about codification of functions. Elsewhere you don't and it would be crazy to suggest that central Government would be absolutely bound for ever and a day in terms of changing the functions that local government has.

What I think we're talking about more is a set of reference points that would give you a greater focus on local government being independent, which is what many of the constitutional clauses in countries that have written constitutions focus on. So a reference point, a place at the table, a committee that looks at precisely those issues and, therefore, provided, as I put it earlier on, a bit of sand in the wheels to make it rather harder for central Government simply to unilaterally change the rules. But if, in a considered debate, you ended up with changing some of the functions of local government, so be it. I think one has to accept that in the end central Government will have the last word. It's just a question in many ways of how quickly and easily they have that last word.

This is not just true of the UK. It's true of the other countries we look at. The question is how quickly and easily can they do that and they can so far, on historic experience, do it a great deal more quickly and easily and, therefore, one might almost say whimsically here than elsewhere. I

think if you had those rules of the game established you just live with the fact that there are different party controls. Again, that's not unique to this country. Local government and different tiers of government have to live together with different party controls across the democratic world.

**Q25 Mr Hamilton:** Councillor Gough, would codification, do you think, lift the prestige, the status of local government, generally? It's a very general question. Following on from what Christopher Chope and Eleanor Laing said earlier, if the status of local government is improved in the general public eye, would that attract higher-calibre people both into the officer corps and to stand as elected members, in which case that might take some of the burden off Members of Parliament from doing some of the very local government casework that they're currently landed with?

**Mr Gough:** I think, firstly, it would be part of a process that would help. I don't think in and of itself it's a magic bullet. But I think if it was part of a process by which the way in which local government operates changed-and as I've said it several times, I think there are about five or six dimensions to doing that, it's not just one element-then, yes, I think some of the consequences you describe would flow. Now, I think if you look at many of the major authorities, both in terms of their political leadership and the quality of officials and officers they have, it's pretty high. There was a phrase that one commentator used about how central Government had looked at their local counterparts as "hewers of wood, drawers of water"-the people who do all the prosaic, rather boring stuff and are not up to very much. In practice, from my experience of what I've come across with local officials, that is simply not true.

**Mr Hamilton:** Certainly, in my experience in Leeds that's not true either.

**Mr Gough:** I can't answer across all the authorities in the country. But yes, there is no doubt that if you did have that greater degree of freedom you would undoubtedly make things-I think you'd probably see a bigger change on the elected member side than you would see on the officer side. But, again, there are many, many examples, I think, in my own authority and in many others where you see some very, very high calibre people on the elected member side as well as on the officer side.

**Q26 Chair:** Roger, any views on the general power of competence?

**Mr Gough:** A very boring answer is that I think it frankly depends on exactly how it's worded. I'm not a good enough lawyer to be able to answer that. The Well-Being Power was, I think, well intentioned and had some benefit at the margin but didn't get us very, very far and, of course, got tripped up with the LAML judgment. I suspect local authorities will be looking very, very carefully at anything that we have of a general power of competence in terms of what that wording is because I think instinctively they will be a little bit nervous-a bit risk-averse of getting bitten in the way that happened with a number of them over the Well-Being Power and the LAML verdict. But, in principle, it could be a very helpful thing. Again, like all the other things I've mentioned, not a magic bullet but, in and of itself, potentially helpful.

**Chair:** Roger, thank you very much for coming along this morning.

**Mr Gough:** It has been my pleasure. Thank you very much.

**Chair:** We appreciate your time. You have been an excellent witness and extremely helpful in our deliberations. Thank you so much.

**Mr Gough:** Thank you very much for your time and your questions.

## Examination of Witnesses

*Witnesses:* **Professor George Jones OBE**, Emeritus Professor of Government, London School of Economics, and **Professor John Stewart**, Emeritus Professor of Local Government and Administration, The Institute of Local Government Studies, University of Birmingham, gave evidence.

**Chair:** We welcome Professor George Jones from the London School of Economics and Professor John Stewart from the University of Birmingham. What is the plural of doyen? Certainly, you are two of the most eminent practitioners in this field. We are very fortunate not to get just one but two at the same time and we look forward to hearing from you, John and George, today. You know what we're doing; we're looking at the codification possibilities of the relationship between local and central Government. We are not trying to tread on the toes of our good colleagues in the local government Select Committee who are pursuing a complementary inquiry into localism and theirs is very much more focused and pertinent to the nuts and bolts, if you like. Ours is perhaps a little more stratospheric, looking at the constitutional and political implications of codification. I don't know, John and George, whether you want to say an opening word or whether we'll jump straight into questions.

Professor Jones: Jump straight in. We've given our written evidence.

Q27 Chair: I shall kick off by saying that we have the Liaison Committee this afternoon where we're talking to the Prime Minister, and I have to hand in a couple of questions so we don't take the Prime Minister by surprise. One of them is to welcome some of the radicalism that we've seen since the election on pushing powers down to local authorities, a number of specific areas where I think changes have been particularly welcome, and I'm thinking about one of my own areas on early intervention. But my question to the Prime Minister will be something along the lines of: aren't governments always reforming and devolving and localising for the first couple of years when they come into power and then somehow they lose the taste for it? Perhaps the civil service gets to the Ministers; perhaps it's all too much trouble; perhaps there are embarrassing things that local government on occasions might do with that extra power. If that is so, what do we need to do to put in place some bulwarks against central Government giving with one hand and then two years later sucking those powers back?

Professor Stewart: We are advocates of a degree of codification in order to give a degree of permanency. In other words, actions by Government that change the central-local relationship should only be taken with great care and be subject to specific scrutiny. If I could just explain how I see the developments that you referred to. I often quote that in the Conservative Government, which was elected in 1979, Heseltine burnt 300 controls. He had a bonfire of controls. But within five or 10 years there were probably 500 or 600 controls that replaced them. The problem lies very much in the very working of central Government, which you hinted at.

Most of the proposals that come forward from Departments that affect local government, and even from sections within the CLG itself, are considered on their merits. Nobody considers, when they're introducing legislation with some new specific grant, for example, that it will have an impact on local government and that it will be a cumulative impact on local government. It is considered on its individual merits without regard to the impact on the central-local relations. Nobody in central Government has been accustomed to scrutinise the proposals that way or to assess the cumulative effect. It is only recently, for example, that central Government set out to find out how many plans it had required of local authorities and it required a major research project.



After the research project came out, people found another ten. How many bits of information had been required from local government? Again, a research project was needed to find that out and even that is disputed: whether it is 2,700 or 4,400. In other words, there was no overview of the relationship and there is no pressure on Departments to consider the nature of the relationship. The predominant culture is against that. What we are arguing is that you need something that will at least break through that culture; at least force the Departments to consider the overall effect on central-local relationships. We have been thinking that requires three things.

One, it requires codification of the principles that should-not be, should-underlie the central-local relationship, which may involve statements about the role of local government. Secondly, it requires a statutory basis for that. The civil service is very conscious of statutes and the need to work within the statute. But the CLG Committee had a very interesting experience on its previous issue of looking at the balance of power. They had two Ministers before them, not Cabinet Ministers but Ministers of State or Parliamentary Secretaries, and they asked them about the concordat and what influence it had on them. They flannelled; it was fairly clear they hadn't the faintest idea what the concordat was and they didn't say-and that would be true of most of the civil service as well. If it had been in a statute, although we think it is weak, it would have at least received attention. There would have been things come out about how you had to pay attention to this and so on and so forth.

So the third thing we think is required is a monitoring process, which we have suggested in the paper could take various forms but we don't want to set up another quango at the present time. We suggest a joint committee of the two Houses, which would report on specific policy changes or specific legislation that they felt undermined the principles of the codification so it was reported to Parliament. And then it would produce an annual report giving an overview of the situation. Although it's not in the paper-and George may want to say something about this-we also wanted to strengthen the internal scrutiny of proposals, possibly not by the CLG but maybe by a Cabinet committee guided by the principles.

Professor Jones: John has given you a very good overall statement about our evidence. Getting back to your question this afternoon, I think it's a very good question and, to my mind, the previous CLG Select Committee that reported in May last year pointed out the centralisation that that had tipped the balance of power from local government more and more to central Government. There had been the process, as John has outlined, of creeping centralisation, and their conclusion was that there needed to be a rebalancing in favour of local government. Our proposals are based on the fundamental proposition that we can't rely on the present culture, attitudes and laws for protecting what should be the proper relationship between central and local government. One needs something to give a degree of permanency to a relationship to stop that centralisation occurring, despite all the previous rhetoric from both parties, when in opposition, in favour of local government.

Q28 Chair: Presumably if you're to do that with the consent of the Government it's best to do that when the Government is feeling in the mood, as they always are just after an election, rather than to try and get it through when what we might term abuses of the relationship have started to take place in year three, four or five?

Professor Jones: You might, Mr Chairman, want to probe this afternoon whether the Government is in favour of decentralisation to local government, because coupled with that word is localism, which seems to be decentralisation to sub-local government. "Sub-localism" would be a more appropriate word for what the Government seems to be suggesting, which suggests to me an erosion of local government; that is, decisions being taken by elected councillors. So I hope you will probe because there is some inconsistency in Government. The Secretary of State for DCLG says, "Localism, localism, localism". That is his mantra but he also, at the same time, seems to think that

he knows best what the level of council tax should be. He will know whether it's excessive or not and then insist on a referendum. He seems to know how local authorities should conduct refuse collection. He seems to know how they should inform their citizens about their activities and he seems to know about how local authorities shall operate surveillance mechanisms. So there is inconsistency that I hope you will probe.

Q29 Chair: In safeguarding whatever codification might be appropriate, have you considered the 1911 Parliament Act, which basically allows the second Chamber to say no to the first Chamber in one circumstance only, and that is if the first Chamber seeks to extend its own life. Other than that, we now know that the second Chamber has very limited powers. It may delay, but it cannot say no other than in that one case. Have you considered adding to that very short list of possible vetoes the powers and the independence of local government so that you would need to win over a second Chamber were you to infringe local government powers in any serious way; in other words, there would be a failsafe mechanism?

Professor Jones: We could, of course, range much wider into having reform of the House of the Lords and indeed perhaps a written constitution. We could go in that direction. I'd rather not at this stage because I foresee that you're entering very difficult territory there: complex issues, highly controversial. It will take a long time to achieve that sort of measure of protection for local government. Our recommendation is we go step by step and the first step is to give statutory protection to local government. Only a first step, but some of us would go much further.

You mentioned the House of Lords, and we do stress that our monitoring body should be a joint committee of the House of Commons. We feel we have to bring in Parliament as a whole in order to challenge the mindset of Government that has developed in recent years that local government is simply the delivery agency of central Government, that local government is no different from any other section or division within a Department. We need to challenge that very concept and the way to challenge it is to have a codification that states that local government is not just a division of central Government but is in fact the government of a local community, answerable and accountable primarily to its own local voters.

Q30 Chair: And would you say that it is not possible to have a degree of distinction between central and local government unless you also ensure that local government has financial independence from central Government too?

Professor Stewart: We were both members of the Layfield Committee and we stick, in many ways, to its recommendations. Our stress on local accountability implies proper local financial accountability and it's very difficult to have proper local financial accountability when you have so much dependence on grant, with the gearing effect of the grant that distorts the message given by the local tax increase.

Chair: And a final one from me.

Professor Jones: Can I just come in?

Chair: I'm sorry, George. Please do.

Professor Jones: That's an absolutely crucial matter that we should have added to our paragraph 8, where we have our points that you put inside codification. We don't think it's appropriate, if you're going to have genuine local government, for local government to be dependent for most of its money on central Government grant. We feel that local authorities should be looking much more

down to their localities, conducting a dialogue with their own voters, over both spending and taxing decisions taken together, so that when they decide to spend more or less they have to pick up the consequences of that spending in the raising of the revenue or the bulk of the revenue to support it.

At the moment they are looking up all the time to central Government saying, "Give us more grant, we want more grant." I've used the expression they behave like drug addicts wanting their annual fix, and I want them to be less dependent and really to be allies of the Treasury. We hear decentralisation for other Departments but what about decentralising the Treasury so that it doesn't have all the taxes, bar council tax, under its control but that it gives up some of the taxation powers and uses local government as its ally in the wise use of resources?

Professor Stewart: There is a very important point that George is making about the effect of most of the centralisation measures; that they actually mean that a local authority becomes less interested in the views of its own people. The same thing is true also of the inspection side. It has now become more important to many local authorities to please the inspectorate than it is to please their local electorate. They have developed inspectormanship as a technique for dealing with the inspectors.

Q31 Chair: Is it possible to give freedom and independence to a group of people who are not themselves demanding it?

Professor Stewart: What people want from it is a very interesting question because they give different answers, depending on the nature of the question you ask. If you say, "Do you want the same standard of service throughout the country", they will tend to say, "Yes". If you ask, "Should local people have a choice as to the nature of their services", they will also say, "Yes". I think that local government has not been strong enough in making its own case for greater discretion. They have accepted the phrase "postcode lottery", for example, not saying that there may be postcode choice and so long as it is a conscious choice by the council, legitimated by the election, that is a justification.

Professor Jones: I would have thought that local authorities are asking for it. I hope they'll be giving evidence to you through the LGA to show that they are asking for it. Some will. Some won't and I think it's sad if those don't but it's understandable why they don't. Because of the centralisation, they have become dependent on central Government so that they won't do things unless they're told to do them; unless they're given guidance, "Oh, we must wait for the civil service to give us guidance". And this, of course, sucks central Government and the civil service in—they love it because it's more work for them, issuing these mounds of regulations and rules and guidance and it has made some local authority areas reluctant to act without the centre telling them it's okay.

Chair: Well, they now have their chance. I hope we're going to get flooded with views and evidence. There is no great sight of it at the moment, I have to say, but no doubt through your own channels you'll promote some interest in what we're trying to do here.

Q32 Sir Peter Soulsby: I wanted to pick up John's point about postcode lottery. It was something I raised with the previous witness; just to suggest that there really does need to be a major change in expectations and culture at local level and national level if that is to be combated. Is it not the case that Ministers have an enormous temptation to step in when somebody points out that there is a postcode lottery in the provision of any service? Isn't this a major cultural change that is needed that perhaps goes beyond even just putting something on a bit of paper and codifying this?

Professor Stewart: Clearly a major cultural change is needed, at both national and local level. The CLG Committee had a very interesting experience, not in this remit but on the previous one. They

went to Sweden just about the time when all the problems with Haringey and the Social Services were coming up. The politicians and the civil servants there were horrified that the Secretary of State had removed the director. That was surely a matter for the local authority to do, not for them, but in a sense nobody challenged it here. It was seen as a Minister acting and getting credit for it. Not even the LGA challenged it effectively. The culture of centralism has gone very deeply in this situation. We see what we're proposing as only one step. It's to secure the fact that attention is paid to this issue and that should be the starting point for change. But, as George says, we think it's quite a long process to change the culture, to change the system, and all we're recommending is one step.

Professor Jones: I think my old colleague Professor Vernon Bogdanor has written that constitutional change, codification, isn't going to do the trick because what is important is culture and political behaviour. But political behaviour and the culture of organisations is very much influenced by the formal structures and rules of the game in which they operate and you're dealing at a fundamental level with these basic rules of the game. Changing the culture of central Government: here is a little suggestion that you in this room can help bring about. It's to do with parliamentary questions. One of the lessons we learn from devolution is that the Table Office or parliamentary authorities here will throw out any questions that deal with the responsibilities of the devolved Administrations and Government. What about asking them to throw out any questions asked by MPs on matters within the responsibilities of local government? That would force a big change of culture so that MPs themselves would not be dragging central Departments and Ministers into the responsibilities of local government.

Sir Peter Soulsby: Thank you, gentlemen. I like that.

Q33 Mrs Laing: Yes, I like that; if only it would work. In your paper, and then in what you both said a short while ago, isn't the crux of the matter the question of-I think you're right to say not postcode lottery-postcode choice? Of course the press will go on about postcode lottery, where you have an imbalance between one part of the country and another. But if you really have true local government is there not an essential conflict between the responsibility of local government-and the accountability and power of local government-and the need for central Government to impose some sort of fairness across the country as a whole, to put it in its simplest form?

Professor Stewart: It depends where you're talking about fairness. I'm in favour of a degree of fairness in the financing of local government. Therefore, I'm in favour of a grant system to deal with the differences in needs between areas and the differences in resources in areas. That provides a basis from which each authority is in an equal position in dealing with the problem. It's never perfect; it shouldn't be perfect. It's one of the reasons why the whole taxation basis should be bigger. You'll find as you go to countries that the more the local authority has its own financial resources-they still have a grant system, for example, in Scandinavia-it's much simpler because it's less critical in its effects on the situation.

Professor Jones: When you ask the people what they want, we know from Ipsos MORI surveys that they want the price of beer to be the same everywhere or the price of petrol to be the same everywhere. That is fair, isn't it? So, yes, it all depends on the question you ask. How do we get the fairness? "Oh, central Government has to do it because it's above everything and so superior". For 60 years, we've had the National Health Service and the most vivid examples in the media of the postcode lottery appear in health. If centralisation will not deliver acceptable standards, it's the time to give it to local government, because I think that you'll get higher standards if you have local authorities exploring with their local voters what should be done in their area.

The whole notion of national standards, the idea that the centre has to step in with national standards, I'm very sceptical of that. I see that as the way to even more centralisation because you have your national standard, whatever it is. Are MPs going to accept that national standard, which is essentially low? You'll want improved services, higher standards. So your pressure will come on central Government to raise that standard. By giving to central Government the responsibility for national standards, you've created a self-generating pressure for centralisation. So I'd get away from that approach.

Q34 Mrs Laing: I'm delighted to hear you say that, because personally I happen to agree with you. But I'm just thinking it through, because we had some elements of this in the 1980s. What does central Government do then if the model is followed through where there is true accountability and true tax-raising powers given to local authorities at lots of different levels but with the built-in measures, which Professor Stewart mentioned, to make up for some areas of the country having greater tax-raising ability than others, which is absolutely correct? But then what happens if the people choose a particular government of a particular local area that decides, let us say, to spend far more than we would consider the norm and, therefore, to raise their local taxes, and the effect of raising those local taxes would be to drive out businesses and make old people not able to pay the taxes pay and so on? You can imagine the situation. What then should central Government do?

Professor Jones: Nothing.

Mrs Laing: That's a brilliantly purist answer.

Professor Jones: We want Parliament to impose duties on local authorities to provide education or to provide health. It's not for central Government and we hope that the financial arrangements will not be such as to drive out business, because we're proposing, following the thinking of the Layfield Committee, that we have local authorities getting the lion's share of their resources from taxes bearing on their own voters. So you'll have vital, we hope, local democracy, more candidates coming forward, higher turnouts because the local elections will matter and they'll be seen to be about something.

Can I put to you a point that my LSE colleague, Professor Tony Travers, always makes on this issue? I don't know if you are having him before you.

Chair: We are, yes.

Professor Jones: Well, 30 years ago, people thought there ought to be a ban on smoking because it's a killer, or the advertising. We had to wait all this time to get the bans, the restrictions; we had to wait for central Government to do it. Suppose Parliament had said, "We leave that to local government". Some authorities would have done it, some wouldn't, and I bet more lives eventually would have been saved if it had been put in the hands of local authorities.

Q35 Mrs Laing: I'm sure that's right, and I entirely agree with your line of reasoning but it still leaves the question. What if you have an extremist government elected in a small part of the country and their economic policies effectively bankrupt that part; let us say, a city in the Midlands? That could happen. Who picks up the tab?

Professor Jones: The bankruptcy and deficit; it happens now with the National Health Service, once you have the centralised, nationalised system. We don't have these deficits with local government.

Professor Stewart: It's a very interesting question. Why do we get them in the health service but we don't get them in local government? The treasurer, the finance committee; even when there is overspending, it's corrected within a year.

**Mrs Laing:** Thank you both.

Q36 Chair: I suppose you could argue that, along with your package, you could have, for example, a requirement-as they do in many if not most American states-for a balanced budget provision that would be part of the settlement.

Professor Jones: Which local authorities have now.

**Professor Stewart:** There is clearly a balanced budget for that.

**Professor Jones:** That's the reason why the National Health Service gets into trouble and local government doesn't.

Q37 Chair: And the local authority could borrow against its credit rating and if it had an appalling credit rating it wouldn't be able to borrow to get into bankruptcy in the first place. I guess the final check must be the electors themselves who decided to put that group of people in.

Professor Stewart: One of the problems of intervention is that you cut short the democratic process; in fact central Government acts rather than the local electorate acting.

Q38 Chair: You're not proposing the suspension of human rights? So if there is a local authority that decides to not educate its children or to do something equally dramatic there is a legal framework that covers central Government, let alone local government. That would be continued and there would be jurisdiction over those abuses, wouldn't there?

Professor Stewart: Yes. We are proposing that local government is subject to the law laid down by Parliament. We think that, in relation to local government, that law should lay on general duties much more than a detailed prescription of what should happen. The requirements that are laid upon local authorities are the same as those for other people: to respect human rights in the situation. It's true of those countries that have the power of general competence, that the power of general competence cannot undermine the rights, which in many cases are constitutional rights, in those countries. That bears upon the local authority.

On the power of general competence, an interesting change has taken place. I was brought up to talk about the power of general competence. The Government talks about the general power of competence. Is it different? My suspicious mind wonders whether that is actually so, but it is a significant change, in the same way as mayoral referendums are now called confirmatory referendums. Again, it's strange because it arouses suspicion in people like me.

Q39 Mr Chope: I think it's a real tonic to have such wisdom and experience in our presence this morning. I think that our two witnesses have really put their fingers on the point of our frustration as parliamentarians regarding the Government's agenda-they talk the talk about giving us more power but they're not giving us more power. In the same way they're talking the talk about giving more power to local authorities through localism but in fact they're not going to; they're going to go for this very interesting concept of sub-localism. What I wanted to ask you was, using all your experience and seeing what has happened over the years, what do you think has happened to the quality of people who are in local government and have been attracted to local government as a

result of the increasing pressure for centralisation? Do you think that any of the changes that you are arguing for would result in more or different people being attracted into local government service?

Professor Jones: I love that question. When I did my doctoral thesis in the early 1960s I studied my home town of Wolverhampton. I took a long period from the 1880s to 1960, and one of the things I studied was the calibre of councillors. I can report my finding quite clearly over that long period that each year there were moans about how they were all better in the good old days, and this is consistent. I took this back, looking in the records, to 1848. There has been decline ever since then and this is a perpetual moan that the calibre of the councillors was far better in the olden days. Now, when you look at the educational qualifications of councillors, they've shot up. I'm not the one to say that you can correlate educational qualifications with being a good or bad councillor. I think it's totally irrelevant.

Getting back to our argument, I wonder why people become councillors now. When local government has seen its powers so eroded, its discretion limited and when they've been subject to such abuse from the local media, why should they do it? It's a wonder to me that people do come forward. I know parties have to go to great efforts to get candidates. I'd like to bet that if our vision of genuine decentralisation takes place in which local authorities are taking decisions that are seen to matter, when they're having to engage with their local voters about taxes that really bear on them-because in our model, the bulk of the local spending will be financed by local taxes on voters-then I think there would be more vital local politics, discussion, activity. People will want to come forward, because what local government will be doing will really matter to them and their families.

Q40 Mr Chope: Just a supplementary. Obviously in the time that you've been monitoring local government, we've moved from a stage when councillors received no remuneration at all, or virtually no remuneration-certainly leaders of councils received nothing but did that as a part-time supplement to what they were already doing. Do you think that the fact that local government councillors are now paid has created a change in the sort of person who is attracted and that we're getting more people regarding it as a supplementary job to their pension past retirement? And perversely, because local councillors are being paid, it's regarded as being almost a full-time job to be the leader of a council and that almost excludes people who are young professionals, such as I was when I was a leader of a council, from being able to engage in that type of activity? Do you have any comments on that?

Professor Stewart: You can argue it both ways. The payments have made it possible for some people to get on the council who would not otherwise have been able to. I think I'm in favour of what has happened on payments, in the same way as I'm in favour of what has happened to MPs over the years. It's recognised that this is a job in which there is a public service element but there is hard work to be done for which there should be some payment in the situation. Therefore, it has strengthened the situation.

One of the remarkable things, just on your general question, is that I think that the reduction in powers has had relatively little effect on the recruitment of councillors. I think, on the whole, the quality of councillors is higher today than it was about 50 years ago. If you think about 50 years ago, many authorities were run by a single individual, a very powerful leader. Many of the councillors today would not tolerate that degree of a powerful leader that was customary in many of the great cities that people served for 30 years as leader and were virtually never challenged in the situation. Now you have a more challenging council. So I think I'm reluctant to say that the quality has gone down. As for the quality of many of the officers, you can't generalise about it. We can all go to authorities where the calibre is low or where the officers are of poor quality.

I think the frustration becomes greater when you have got onto the council. They've found that what they want to do has been overturned by a Minister and so on and so forth. Therefore, I think in some areas, turnover has increased and people haven't stayed on all that long. That has happened quite a lot in London, I think.

Q41 Mr Hamilton: I would absolutely agree with your last comment, Professor Stewart. In my experience of over 25 years of both being a councillor and then being a Member of Parliament the calibre of our councillors has increased pretty sharply in the city of Leeds, but then we have a massive budget and quite a lot of powers in spite of over-centralisation. Can I come back to a point that Eleanor Laing made earlier-I think you answered the questions very well between you-about what happens if the local electors elect somebody quite extreme or a regime that is taking crazy decisions? Can I just put to you that one of the great strengths of certain local authorities is the annual elections, the one-third retiring each year, which our metropolitan districts have. I don't know how many outside that have. That makes for quite a lot of fluidity and dynamism and it means that in the situation that we had in Liverpool, for example, it was possible-especially if turnouts increase because local authorities have more power and there is this codification that we're looking for-for people to chuck somebody out or an Administration out within a very short period of time if the electors don't like what they're doing. I just put that to you. My question is this, that-

Professor Jones: Can I interject and say Doncaster, where even the councillors think that the voters have voted into office a totally unsatisfactory, directly elected mayor, they've passed votes of no confidence on him and nothing can be done. He's stuck there because we don't have mechanisms of recall in this country.

Professor Stewart: They passed two on his predecessor as well, because both of them were incompetent. Just a passing point. One of the things that worries me about the elected mayor proposals, or the Government going to have referenda, is surely this is the time is to think whether we have the right legislation governing elected mayors. It's a unique position: somebody, a single individual who cannot be removed by any means other than he breaks the law within a four-year period. Prime Ministers can be removed within a four-year period. Other countries recognise this and most of them have some mechanism, not an easy mechanism, by which you can call or recall elections by a certain percentage or a special vote of no confidence can be passed. Surely we should be thinking about that in the light of the experience of some of them.

Q42 Mr Hamilton: Does that not underline the need, therefore, for codification?

Professor Stewart: Yes.

Professor Jones: Yes.

Q43 Mr Hamilton: But it is intolerable that somebody could be in that position; whereas the scenario I've just painted of an administration elected almost annually, you can turf out the leader quite easily.

Professor Stewart: This is one of the subjects on which we disagree, by the way, about elections by thirds, because we both defend the system we know. I live in Birmingham, which is elections by thirds. That seems to me, for the very arguments you're putting, the right one. George lives in London where elections are every four years and, therefore, that seems to him to be the right one.

Professor Jones: But I would leave the decision on which you use to the local people, the local authority, to decide because it will differ in different areas.



Professor Stewart: Yes, I would too.

Q44 Chair: Can I press George on that? Would that be part of your codification proposal, that local people decide their own electoral system?

Professor Jones: We haven't put it in our paper. We're trying, in our paper, to have a codification of the fundamental, basic principles. We wouldn't like to clutter it up with other aspects, as in the documents you've circulated: the Scottish, the Welsh, the concordat, these charters. They're cluttered up with all sorts of service business, programmes; we want to get to the fundamentals.

Chair: Fine. John, I'm sorry, I interrupted you.

Professor Stewart: I was just going to make a point arising out of the discussion. We place great reliance on the local electorate and I think we sometimes underestimate them, because we assume all local elections are determined by national swings, which is not entirely true. I often quote the example of Stoke-on-Trent, which was governed, when the new unitary authority was set up, by a council composed of one party only: Labour. Within six years, Labour had lost control of that authority. The electorate had made a judgement on that authority. The electorate can respond, and it's not necessarily governed by national trends, when something goes badly wrong.

Q45 Mr Hamilton: May I come back, because my main question follows on from your very excellent replies about how important the local electorate is. One of the problems all Members of Parliament face is that very often our electors, who often make very subtle choices, look at us to correct the problems that councillors will not deal with, cannot deal with, are not competent to deal with. Isn't the problem here that we have a massive lack of education among parts of our electorate that don't understand the difference between local and national government and think that very often an MP is in charge of the councillors and can tell them what to do? They think that we can resolve the problems that their councillors are unable or unwilling to deal with.

Chair: The codification aspect of this is what, Fabian?

Mr Hamilton: The codification aspect is that we need to teach the old-fashioned subject of civics, as it was when I was at school. We need to teach our children more about how national and local government works, which we can only do once we've codified it properly. Would you agree?

Professor Stewart: I think codification, as far as you're making clear what the roles of the different bodies are, would help in this respect. Just one passing comment on that; it is true that people go to MPs with local problems. It's also true that they go to councillors with national problems. The average councillor finds himself dealing with health issues, and with social security issues, partly because the problems don't always fit into boxes. But it's the reverse aspect of your remarks and leads on to the codification issue.

Chair: I'm going to ask Simon to come in. But I do remind colleagues I'm keen that we don't tread on the toes of our colleagues who are doing a report on localism. I know that we'll stick to codification, which is our baby.

Q46 Simon Hart: I have to confess to getting increasingly depressed as the morning has gone on. That is not because you've said anything that is distressing in one regard, but because in Wales I think, from what you've said, we almost have the worst of all worlds. We have two forms of central government, which has led to, I think in any rate, my own private view, a sort of stagnation within local authorities; partly, I think, out of convenience. I just wondered where we go from here as far

as your thoughts are in the context of the Welsh Assembly Government and central Government as it applies to local authorities.

I suppose it's a separate question in a way; in my particular instance we have an independent council-an independent local authority. That, you may say, is fine but it is an independent local authority acting as a political party, which it does now. As it happens, it seems to do quite well but it needn't always be like that. Picking up on Fabian Hamilton's point, we do have a situation where people happily, and have done for many years, vote for an independent council that in a sense is anything but than independent. I wondered whether you agree with me that we are in a not particularly satisfactory position in Wales and, if so, where do we go from here?

Professor Jones: I want to trust the electorate. I'm a believer in representative democracy, which I see at the heart of our system, central Government-local government. So I'm going to trust the electorate and I hope that the parties and the anti-party candidates will treat the electorate with respect and have a genuine argument. My own personal view on independence is, as my students very well know, what does "independent" mean? It means somebody who cannot be depended upon on every issue. What on earth are they going to do? Are they going to consult their consciences, judge the issue on its merits?

The advantage of a party as against an independent is that the members are signed up to a programme. They give the voter a guarantee. You wouldn't buy a piece of electrical equipment without a guarantee. So the party label is the guarantee. You know which policy, which programme, which leaders that person is going to support, but if the voters in particular areas don't want what the parties offer and decide to choose independence, then I'm prepared to respect their verdict and not call in central Government or bring in national commissioners to govern that area.

Professor Stewart: Going back to codification, I think the fact that local government is based on representative democracy is one of the more fundamental defining principles, and I would like to see something that suggested the importance of representative democracy. I'm a great advocate of new methods of democratic involvement, greater participation, but I do face the fact that in government, most decisions have to be made by representative government. The key task, which you find very few people mention, is how you strengthen representative democracy. My argument for more participation by people, more interaction between councillors and the public, is that it will strengthen representative democracy. I would like to achieve something that clarified the relationship between participation and representative democracy.

Q47 Simon Hart: One very quick and I think crucial point. In Wales, we have an Assembly that does not have primary law-making powers, but does that get in the way of what we're all trying to achieve? It seems to me what you're saying-and I may have got this wrong-is that the fact that it is ultimately accountable to the UK Parliament is a barrier to where you're trying to persuade us to go. I'm actually with you on this. When I see the Welsh Assembly as it is at the moment, it's neither one thing nor the other. Is that an accurate reflection of what you're saying?

Professor Jones: As I understand it, with the devolution settlement, local government's responsibility to the Welsh Assembly and the Scottish Parliament, that is for them to deal with. I would hope that you in your recommendations would put forward something that's so attractive to local government that they'll be demanding it for Scotland and Wales as well as for England.

Chair: Well, perhaps we should ask Sheila.

Q48 Sheila Gilmore: Thank you. I was going to ask your views on recent developments in Scotland, but just before I do so I have one slightly different question. If you want to do what you've been suggesting, is it not going to be necessary for there to be a much stronger self-denying ordinance about what subjects the Westminster legislature-or indeed perhaps the devolved legislatures-take? Part of the problem, is it not, is that the Government here campaigns on issues that it wants to campaign on, for example, education-"We're going to do this, we're going to do that"-and then it wants to get them done? So there is a lot of pressure. If, for example, you wanted local government to genuinely have its own education system and targets and so on, doesn't Westminster have to butt out in quite a large political sense, perhaps more than just codification?

Professor Stewart: That's what you were getting at, isn't it, George?

Professor Jones: It seems to me-and I don't want to disentangle the devolution settlement-it's here, and in that settlement, local government is the responsibility of those devolved institutions. So, in Scottish local government there's a different electoral system from the one prevailing in England, with proportional representation and STV. It could have different financial arrangements, although the Treasury might contest this. It seems to me these are matters for these devolved Assemblies and, as an advocate of devolution, I'm not going to propose something that is going to undermine the settlement.

Q49 Sheila Gilmore: I think what I was getting at, and I think Eleanor touched on this, is that Westminster has more or less kept out of the issues that were devolved but at the same time, we don't keep out of issues that are local government issues and we have policies on them. We promise the electorate all sorts of things. There's a good example in Scotland, in fact. The Scottish Government campaigned to reduce class sizes to 18 in primaries one to three, but they don't run the schools. So, how do you achieve that, or do you then become quite directive and you say, "Right, okay, we are going to demand that you do these things above what you might want to do"? So don't we have to have a renewed political settlement as well as a codification settlement?

Professor Stewart: I think it's like many of the other issues. We would probably say yes; but what we're thinking is a step at a time that could even lead on to things like written constitutions at the end of it.

Q50 Sheila Gilmore: We've had a concordat in Scotland for three years now, which arguably is reducing the powers of local government, not increasing them. We had another example of the Scottish Government announcing yesterday what their proposed financial settlement would be and it's very much, "You can have this level of cuts if you do this and if you don't do what we want you to do, you'll get that". That is not about devolution of power. Is that a distortion or is inevitable that that happens?

Professor Jones: The *Concordat for Scotland* and the *Partnership Scheme for Wales* we would criticise as not being the sort of documents that we're looking for, but we hope will come out of your Committee. What I hope you will come up with is a codification of key fundamental principles. I realise your Committee is composed not only of English members but of members from Scotland and Wales. So that must suggest to me that your recommendations are UK-wide. I hope that your recommendations will be commended by you not only for England but for Scotland and Wales too.

Professor Stewart: Reference has been made to the concordats and I don't think they come near where we want to be. The charter is a more interesting document in that sense-the *European Charter of Local Self-Government*-because it's full of sentences where you read the first part of the

sentence and that seems right and then there is a qualification saying, "So long as statute doesn't contradict it". That would be no purpose for our code, which is the means of judging the statutes. And what happened, I understand, is that the British Government was in the negotiations about the charter, and the Permanent Secretary of the time managed to insert these little bits in at the end, and said it was essential if it was to be approved in Britain. What happened at the end, I understand, was that, of course, it wasn't approved in Britain, which annoyed all the other countries that had agreed to these. But it means, in looking at the charter, you will find clauses there that do meet the needs that we're talking about so long as you eliminate the qualifying clause at the end of it.

Professor Jones: I think the *European Charter* is much more important for your work, and it would provide you with the first building blocks if you take those clauses. You can wipe out the qualifications that were later inserted by the British to get acceptance and then, as John said, they didn't until the Labour Government accepted it in 1997 and then ratified it in 1998. So I'd begin much more in your codification work with the charter rather than the concordats.

Q51 Mrs Laing: While we've been speaking this morning the Home Secretary has taken a big step, I see on the monitor there, to decentralisation by removing from public bodies the duty to do an assessment of socioeconomic equality in all that they do. That's a step away from centralisation, but not the point before us. We are discussing what would happen if codification were to take place, defining the relationship between central and local government. I've listened carefully to what you were saying and I like what you say, of course, about leaving it to the people to decide.

That is what democracy is all about: local people decide on local issues; they choose their local government. But even though the turnout at local elections tends to be below 30% and, therefore, local people don't engage, do you think they would engage to a greater extent if it was clear that they're on their own in making the decision and that if things go wrong then central Government doesn't step in and if a local authority really makes a financial mess, then the local people have to accept that it was their responsibility in choosing that local authority?

Professor Stewart: I think it might well not happen immediately. It would take time before people realised, because their habits and minds and their culture is based on present practice, but I think it would happen.

Chair: George, last word?

Professor Jones: Yes. I repeat what I said earlier. If local government, at the same time as it was taking its decisions on spending, had to take decisions on how to finance the bulk of that spending that would generate a very big political debate locally in the council and in the wider public, because the decisions would be seen to have much more impact on local people.

**Chair:** Any last points, colleagues? Chris?

Q52 Mr Chope: So, basically, you're saying you can't separate out this issue without having the issue of local government finance separated out from the issue of local government itself?

Professor Jones: Yes. On our paragraph 8 where we lay down in our written evidence the key fundamentals, under point number 3, "Local government needs the powers and resources to carry out their primary role", I would add something there about the resources coming overwhelmingly from local taxes on local voters so that you get away from the dependence of local government on central Government roles.

Q53 Mr Chope: I'm with you on that. But with the experience of the community charge behind us, which brought down, arguably, one Prime Minister, do you not think that this is now asking for an impossible dream?

Professor Jones: I do realise how scarred Members of Parliament are by the poll tax fiasco, and that means that there's a feeling, "Oh, we'd better not touch that subject because if we touch that subject the winners"-and there will always be some winners-"will keep quiet but those who are damaged, they will be squealing and the media will pick up on that". I thoroughly realise that, but I hope you'll be able to rise above it and think in an objective way about what system would be better for our local democracy and indeed for the democracy of our whole country.

**Chair:** That, of course, was a centralising measure. That was an imposition. That wasn't a failure of giving local authorities the ability to raise their own money; exactly the opposite. So I don't think we need worry about that being detrimental to-

**Mr Chope:** We can argue about that.

Chair: George, John, thank you so much. That has been so illuminating and we will think on your evidence as we take evidence from now through to Christmas on this very important issue. Thank you so much for attending.