

HOUSE OF COMMONS

COMMUNITIES AND LOCAL GOVERNMENT COMMITTEE

THE BALANCE OF POWER: CENTRAL AND LOCAL GOVERNMENT

Memorandum from Jeremy Smith

Introduction

1. I would like to thank the Committee for this opportunity to provide a brief written evidence in relation to your Inquiry into the balance of power between central and local government. I believe it is both timely and extremely important to look at this subject, which has frankly been neglected for too long. I am submitting this evidence in a personal capacity, but my views are, I believe, fully in line with those of my organisation (see next paragraph).

2. Since May 2002, I have been the Secretary-General of the Council of European Municipalities and Regions (CEMR), which today brings together over 50 national associations of local and regional government in 37 countries (this includes the LGA and CoSLA in the UK). I have worked in local government for 25 years, and from 1990 to the end of 1995 I was Chief Executive of the London Borough of Camden. I then became the Director of the Local Government International Bureau (LGIB), which represented UK local government in the European and international arenas.

3. In May 1997, I was present in Strasbourg when the representative of the UK government formally signed the European Charter of Local Self-Government (a convention of the Council of Europe). This was, therefore, one of the very first acts of the incoming new Labour government. The Charter was ratified, with commendable speed, in 1998. It has now been ratified by all member states of the Council of Europe apart from 3 micro-states, and can be said to lay down a common set of principles for local democracy and local self-government for the whole of Europe - not just the EU.

4. The Charter is drawn up in fairly general terms, as is necessary for such an international instrument, but its principles are generally clear. I attach as an Annex a few extracts from the Charter, which I comment on below in the UK context.

5. The main purpose of this submission is to look at each of the questions raised by your Committee from this comparative perspective; in brief, I contend that though the UK system of local government is far from the "weakest" in Europe, it has developed - especially in recent years - in

ways that single it out from all other countries of similar GDP per capita, and in a system which (in particular in England) has more overall central government top-down control than elsewhere. I believe this over-centralised approach has had negative consequences for the overall functioning of our political system.

How the UK's system of local government differs from our neighbours

6. The UK local government system differs from all or most of our European partners in four general respects. We share some similarities with some countries on some of these points, but overall, they mark the UK out as a special case.

(a) the average size; the UK has far a far higher population per local authority than anywhere else, and generally we have been tending to increase the size. Every country has to look at the balance between identity, democracy and efficiency, but the UK "solution" stands alone. In Denmark, for example, which has strong local government, the number of local authorities has been cut recently by over half to 98 - but compare Scotland - which has the same population of 5 million - which has only 32. Germany still has over 12,000 local authorities. (If we were to include the parish and town councils in England, we would look much more "normal" - but this would require us to really empower them in a way that is currently not on the political radar screen...).

(b) central controls, inspections etc.. It is well known that the UK - and especially England - has had a system of central control and inspection unequalled elsewhere. Let me cite just one British source in support - a speech from John Hutton to the CBI's Public Services Forum in May 2007 - exactly 10 years after the New Labour government was elected:

"Because we believed strongly in the case for change, we drove it hard from the centre. We 'owned' the challenge of change. Both the problem and the answer. We came to believe that policy makers and politicians in Westminster and Whitehall were meant to be the brain for every creative impulse across the system. It delivered improvements and continues to do so. But it comes with a price. A stream of initiatives, targets and legislation in which staff often feel passive recipients; in which they have little influence or control....

We set national targets and oversaw their delivery through one of the most expansive audit and inspection regimes in the world. However necessary this shift, it prioritised accountability to the centre." It underplayed the role of the consumer in shaping public services. Or the importance of public preferences and choices in driving performance. As such it meant the 'ownership' for change was 'grabbed' by the centre and left there."

(c) Central controls over finances. Of course, the issue of finance is often one of tension between central and local government, in many or most countries, and the UK is not alone in having a very centrally-controlled system - the Netherlands is another example where most funding comes from the national government. But again, the UK (at present) is an outlier amongst European countries in this regard - with a relatively low level of locally raised taxation, from undiversified sources, and with a still generally tight system of capping. It is worth looking at our system in the light of Article 9 of the European Charter, set out in the Annex; I believe we are right on the edge - if not over it - in terms of our compliance with the Charter.

(d) The constitutional status of local government. In short, in the UK local government has no formal constitutional status; this is different from the position in a large number of European countries. To take the clearest example, Article 1 of the Swedish Constitution is as follows:

"Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. It shall be realised through a representative and parliamentary polity and through local self-government."

Or take Article 28(2) of the German Basic Law:

"Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws.... The guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed."

The Polish constitution contains a whole chapter dedicated to local self-government... and so on. Of course, in a country with no single written Constitution, the task of giving local government a proper constitutional status has to be tackled differently - I suggest, through an Act of Parliament which is agreed on by all of the main political parties, which sets out the key principles, based on the European Charter - it could even with advantage include the whole text of the Charter.

The Inquiry's questions

7. I turn to the specific questions posed by your Committee's Inquiry, which I have addressed mainly from the "constitutional" or comparative perspective.

Further devolution

8. I firmly believe that local government needs greater autonomy from central government. There are two dimensions to this. First, are the existing "competences" of local government sufficient and the right ones? Second, within existing competences, are the controls excessive, reducing the legitimate area of discretion beyond what is necessary or desirable?

9. On the first point, I would point out that in many countries, responsibilities which in the UK are carried out by Quangos or other public or private bodies, are those of elected local authorities (at one level or another), for example, health services, local police services, water services etc. Since we have larger-sized local authorities than elsewhere, there should in principle be more functions capable of being exercised by those authorities. This would indeed be in line with the principles of subsidiarity and "proximity", which are in effect set out in Article 4 of the European Charter.

10. On the other aspect - less central control over existing competences - I would recommend that our whole system of controls is rethought Article 8(2) of the European Charter says:

"Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles",

and Article 8(3) says that administrative supervision by a controlling authority should be kept proportionate to the interests at stake - which would permit action in the case of failing schools, for example, but not in relation to all or most services. Local democracy is (should be) about real choices, within the legal rights of citizens laid down nationally.

Financial autonomy

11. Many commentators have addressed the negative impact of "capping" on local accountability, so I will not add to them - save to say that I am convinced it does have such a negative impact. The problem with the current council tax system is that it is the only main local tax, so that the resources available to local authorities are not (per Article 9 of the European Charter) buoyant or diversified.

12. The fact that the proportion of finance raised via council tax has increased - leading of course to higher individual bills - is on the one hand (theoretically) a good thing, but for obvious reasons is seen by citizens as a bad thing. The only solutions are (a) to cut national income tax by the same amount that the revenue support grant is increased, and by which council tax is assumed to go up, so that there is at a given moment a clear one-off "shift" in the national / local balance of spending,

or (b) to provide alternative or replacement sources of local tax income (which again would require an explicit equivalent off-setting "cut" in national taxes if it is to be seen as fair).

Existing powers

13. The point made above about the abnormal degree of centralization in the British local government system remains important when considering how far local government services are a product of national or local decision-making. The European Charter emphasizes in Article 4(2) that

"Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority."

When the UK signed the Charter, it appeared to many (myself included) that this Article was not complied with, but the enactment of the "well-being" power has arguably brought us into line with it. However, the issue of "full discretion" covers the "how" tasks are carried out, as well as "what" tasks may be carried out.

14. It is also worth considering, when looking at whether local authorities make "adequate use" of existing powers such as trading, that European Union law on the internal market, as interpreted by the European Commission, places real - and sometimes excessive - barriers on the powers of local authorities to trade. It may limit in particular local-local, or public-public, co-operation in service delivery, by deeming the assignment of a service task to another authority to require a full tendering exercise.

Improving the relationship between central and local government

15. My organisation (CEMR) has recently published a book comparing the consultation procedures between central and local government (in particular national associations) in over 30 European countries. (It can be found on our website www.ccre.org, under publications). The English model - the Central Local Partnership - is by no means the worst, and includes some important principles and commitments, but unlike a good number of countries, the overall procedure has no statutory basis. This lack of a legal basis can weaken its status, in particular with ministries other than the "local government" Department which deal with aspects of local government functions, but which may feel free to ignore what is signed up to elsewhere in Whitehall. The Concordat goes a stage further, but whilst I have not been able to follow closely its follow-up, it suffers from the same

potential weaknesses. (In CEMR, we have very recently drawn up a draft Charter on Good Practice in Consultation, which seeks to cover these and other points, and emphasizes the need for a legal basis or at least a full commitment from all main parties).

16. Having made these points, we must also reflect that a relationship is a matter of political will, not just of legal requirements. But equally, unless the law or constitution reflects or symbolizes a more equal partnership, existing patterns of political behaviour and attitude will endure. So I would argue for a firm statutory basis for a future concordat, following wide consultation with all main parties, and if at all possible with their support.

The constitutional position

17. In the absence of a single formal written constitution, it is difficult to give entrenched constitutional protection to democratic local government. But this does not mean that the issue should be ignored - on the contrary, the lack of constitutional protection in the UK is a strong argument in favour of taking more steps now to get a more equal and balanced relationship between the central and local spheres of government.

18. It is worth re-emphasizing that in the modern world, no one "level" of government can tackle the big issues that face us successfully. That is why all modern notions of good governance now recognize the need for partnerships between all levels of government (and of course, other key actors) based on mutual respect to tackle these issues - take climate change, the aging society, crime, drugs, urban renewal... the list is very long. The international community and the EU operate at their levels, but local and (where it exists) regional government are essential components of a system of multi-level governance. That is also why every single EU Member State signed up, in the Lisbon Treaty, to the need for the principle of subsidiarity to be extended to explicitly cover the local and regional levels, as well as the European and national levels. The age of "central government knows best" is - or should be - long past.

19. The European Charter of Local Self-Government provides, in Article 2:

"The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution"

The UK is at present in breach of this simple requirement. The principle of local self-government is nowhere specifically mentioned or recognized, let alone defined within the British (or English,

Welsh, Scottish, Northern Irish..) context. This is a really important first step on the way to a more valued and protected system of local democracy in our country.

20. Although we have no easy means in UK constitutional practice of entrenching rights etc., we have a long history of adopting legislation which everyone knows is "for the long run" and has a certain constitutional value - and not to be part of the ordinary cut and thrust of day to day party politics. It cannot be a difficult task, in principle, to reach agreement between all of the major political parties, with the LGA and other representative UK associations of local government, on a set of principles that define modern local self-government. And if all agree, it provides a reasonably strong guarantee that, for years to come, the rules and spirit will be respected. This would need, moreover, to be accompanied by a special oversight body - perhaps made up of members of both Houses of Parliament and senior local government representatives or experts nominated by them.

21. Of course, the existence of such a consensual Act of Parliament would make its contents ultimately justiciable, and this may be a matter that causes some reserve. But if ministers and Members of Parliament take into account that in many European countries, this has long been the case, without any evident damage to their political or economic systems, it is hard to see what cogent reasons exist for claiming that the UK is yet again a special case. On the contrary, such an Act could lead to a necessary, positive strengthening and rebalancing of our political system.

ANNEX - EXTRACTS FROM THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

Article 2 - Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 - Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute

Article 4 - Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 8 - Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 - Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

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