

INFORME

FEDERALISM, FEDERATION, DEVOLUTION AND FEDERAL DEVOLUTION IN EUROPE: SOME CONCEPTUAL AND EMPIRICAL REFLECTIONS IN COMPARATIVE PERSPECTIVE

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ABSTRACT

The principal purpose of this text is to analyse and to explore the conceptual meaning and empirical implications of federalism, federation, devolution and federal devolution in pursuit of clarity and understanding. There are important conceptual distinctions between these terms but that there have been and still are areas where they can be blurred and indistinct and can even overlap in practice. The analysis will raise many important questions about the relationship between the conceptual and the empirical worlds.

RESUMEN

El propósito principal de este texto es analizar y explorar el significado conceptual y las implicaciones empíricas de los términos: federalismo, federación, devolution y la descentralización federal. Hay importantes diferencias conceptuales entre estos términos, pero también hay áreas en las que sus significados pueden ser borrosas e indistintas e incluso pueden superponerse en la práctica. El análisis planteará muchas cuestiones importantes sobre la relación entre la definición conceptual y el análisis empírico.

I. INTRODUCTION

My principal purpose in this paper is to address the question of ‘New Tendencies in Federalism in Europe’. This is quite a wide ranging subject both conceptually and empirically because in practice different political elites and mass publics have different perceptions and understandings of the terms identified in the title above. They have been used in the language of political discourse in many different ways both historically and today in contemporary politics. They remain in many cases confusing precisely because there has been little thought given to conceptual analysis and they have been used in practice by politicians for their own particular purposes. Mindful of these cautionary reflections, I will proceed in the following way: first a brief explanation of why preliminary terminological clarification is important in our approach to these subjects; secondly, another look at the conceptual distinction between ‘federalism’ and ‘federation’; thirdly a brief survey of what is meant by ‘devolution’; and fourth some remarks about the somewhat awkward term ‘federal devolution’ with a more detailed historical case study of the United Kingdom where this phrase was widely used by political elites. My conclusion will attempt to point up the so-called ‘federal tendencies’ evident in the contemporary world which might lead us to think again about the conceptual utility of our current terms and might also create space for some serious rethinking. Let us begin with a short survey of what confronts the student and scholar of comparative federalism.

II. THE CONCEPTUAL AND THE EMPIRICAL WORLDS

In terms of scholarly analysis there are some important steps that we must take before we can launch ourselves into the study of federalism and federation. It is always essential that we consider definitional clarity, terminological precision, conceptual formation and reformation applied to empirical analysis. Simply put, if the mainstream concepts do not any longer explain the world that we inhabit, we will fail to understand what is happening and misunderstand contemporary change. This is especially important when the conceptual world of federalism and federation meets or interacts with the empirical world of new events and developments that need to be explained.

This predicament has enormous implications for federal theory. Global change in our subject can easily render extant theory redundant. Theory is literally outstripped or overtaken by empirical events and circumstances and can very quickly lose its explanatory power. A theory is only viable if it can actually explain practice and to be valid it must work. In short, it must explain something. If the world of federation changes, especially with the recent emergence of what I have called the “new federal models”, then our tools and our concepts must also change in order for us to acquire some kind of purchase on this usually unanticipated new world. Consequently students and scholars of federalism and federation must perforce address the problem created when the conceptual world collides with new realities in the empirical world otherwise they will not be able to grasp the contemporary significance of what is happening¹.

As we will see, this contemporary perspective of the ‘new tendencies’ in federalism in Europe will become increasingly visible in the following sections of the paper and we will also return to it in our concluding reflections.

III. FEDERATION AND FEDERALISM

Using a modification of Preston King's *Federalism and Federation*, first published in 1982, I have refined his working definition of 'federation' as follows:

A distinctive organisational form or institutional fact the main purpose of which is to accommodate the constituent units of a state or a union of states in the decision-making procedure of the federal government by means of constitutional entrenchment.²

However this concise definition does not tell us the whole story. Clearly a federation or federal state is essentially a constitutional state based upon the successful operation of a written constitution whose principal purpose in theory and practice is to preserve, promote and protect political diversity in whatever form that might take.

Another way of thinking about this kind of definition is to ask what the word 'federal' does to the term 'state'. Evidently it qualifies it but what does it add to it? To my mind it creates a particular mind-set: a specific set of presumptions based upon socio-political *values* and constitutional/legal *principles*. In this approach to understanding federation there exists a strong moral imperative rooted in the recognition of human dignity and, after all, one definition of 'politics' itself is the organisation of human relations. These values and principles include a combination of the following:

VALUES	PRINCIPLES
Human	Dignity Autonomy
Equality	Partnership
Liberty	Self-Determination
Justice	Comity
Empathy	Loyalty (<i>Bundestreue</i>)
Toleration	Unity in diversity
Recognition/Respect	Contractual Entrenchment/ Reciprocity or Mutualism

The recognition of these values and principles are directed principally but not exclusively to a wide variety of socio-economic differences and cultural-ideological diversity that creates a level of legitimate public expectations – a federal mind-set – rooted in their constitutionalisation, legalism and political institutionalisation in the state: a federation. In the Continental European philosophical and political tradition this can be traced back to the political thought of Johannes Althusius in the early seventeenth century whose watchwords were 'association', 'cooperation' and the building of 'political communities'.³

2. See (King, 1982) and (Burgess, 2006)

3. On the political thought of Althusius, see (Hueglin, 1999).

But notwithstanding all of this, I have also endorsed the conceptual distinction between *federalism* and *federation* originally brought into the mainstream literature by Preston King but undeveloped by him. Today this forms the conceptual basis used by many though not all scholars in the field of federal studies and it has always been my own research approach that has attempted to extend and enrich the study of comparative federalism and federation. This includes the incorporation of the concept ‘federal political system’ which has been integrated into a recent modest conceptual re-classification in response to the appearance of the new (largely post-Cold War) federal models. (Burgess, 2012) Arguably this is a much more comprehensive and sophisticated way of ordering all federations and federal political systems in a novel framework of analysis. In some case studies, such as the Russian Federation, many formally federal states do not in practice operate in this way while other cases such as Italy, Bosnia-Herzegovina, Spain and the United Kingdom (UK), are not formally federal but exhibit conspicuous federal elements in their practice. Consequently it is very important to make a distinction between the state and its political system. In short, it is perfectly possible to have a formally non-federal state but one in which a federal political system operates in practice just as it is possible to have a formally federal state whose political system does not work in this way in practice. Let us turn to look at federalism.

Put simply, federation is the tangible organisational and institutional expression of federalism so that we have to ask ourselves the first question: ‘What was the federalism that historically prompted political elites to champion this form of state-building and (multi)national integration?’ The second question is: ‘What continues to animate the federation so that the different forms of difference and diversity can be effectively accommodated in the state in a way that recognises and respects their sense of who they are?’ Broadly speaking, federalism is a combination of different socio-economic and cultural-ideological factors that can be identified as historical, cultural, intellectual, philosophical, social, economic, ideological and largely territorial but also in a few cases non-territorial. This consideration in turn revealed the concept’s enormous multidimensional complexities. But it nonetheless provided scholars of federal studies with a fascinating opportunity to analyse precisely what different kinds of federalisms animated different kinds of federations. However in order to do this analytically federalism had to be placed firmly in its own historical context because meaning derives from context. This is why no federation can be identical to another. The concept of federalism must be located in its own distinct setting for the simple reason that the circumstances which served to create federation were obviously unique in each case because there were different combinations of federalism in each of them but importantly it opened the door for political scientists and constitutional lawyers to contemplate comparing *federalisms* as well as *federations*. What is clear today, then, is that the conceptual distinction between federalism and federation remains heuristically useful because both of these concepts are a response to and a formal recognition of the complexity of human relations. And this approach has had important theoretical and empirical implications for the subject because it also opened up new possibilities for engaging contemporary change. This can best be illustrated by King’s now well-known observation that ‘although there may be federalism without federation, there can be no federation without some matching variety of federalism’. (King, 1982: 77) Mindful of the conceptual significance of federalism and federation, we will turn now to explore the concept of devolution and their relationship to it.

IV. DEVOLUTION

Conventionally I have always construed the concept of ‘devolution’ as a constitutional “handing down” of power and decision-making from higher bodies to lower bodies, that is, from a central political authority to regions, local governments or communal

authorities in the larger institutional hierarchy. From a liberal democratic perspective, it naturally presupposes the prior existence of a central political authority with the legitimacy and institutional capacity to introduce reforms to the state structure. For some observers and commentators this might mean a form of 'administrative de-concentration' whereby responsibilities for the implementation and coordination of national public policy are distributed to civil servants or bureaucrats who act as 'gatekeepers' of the central governing authority throughout the state. However the way that this concept is understood and used today in a general sense is genuine political decentralisation based upon a concrete transfer of powers and competences from the central governmental authority to constitutionally subordinate bodies in the sense that what can be given legally can also be taken away legally. In practice of course the understanding and use of the term 'devolution' varies from one country to another and there are many novel varieties throughout Europe but in essence devolution is not federation.

In the multinational UK this can be seen as a mimesis of the Westminster-style model with three separate sub-state national elected assemblies in Scotland, Wales and Northern Ireland and legitimate local executive power derived from the 'demoi' of difference and diversity rather than from a single undifferentiated 'demos' reflecting the singular legal and constitutional uniformity of a unitary state. As Richard Rose argued in 1982, the UK is an intellectual puzzle: it is united but not uniform. (Rose, 1982:54) And in his classic *Devolution* published in 2004 Vernon Bogdanor observed that even when the UK was a unitary state this was only in theory; in practice it always operated according to the spirit of federalism. (Bogdanor, 2004) Today the UK is widely regarded as a *Union State* that underscores it as a distinct form of political union, especially in respect of the England-Scotland Act of Union in 1707 that created Great Britain comprising England, Scotland and Wales. The island of Ireland was incorporated later in Great Britain in 1801 to create the United Kingdom and it was only in 1921 that the *Government of Ireland Act* truncated Ireland into Northern Ireland with a Protestant majority and a large Roman Catholic minority leaving the Irish Free State, later to become the Republic of Ireland in 1937. Today, then, the UK constitutes England, Scotland, Wales and Northern Ireland with elected legislative assemblies and First Ministers drawn from them in Scotland, Wales and Northern Ireland but not in England. Devolution in the UK is asymmetric not only in terms of the exclusion of England but also in relation to the powers and competences allocated to the constituent units of the union. Scotland has more autonomous financial and public policy powers devolved to it in the *Scottish Parliament* than does the *Welsh Assembly* which uses Scotland as a kind of benchmark against which to measure its own local autonomy. Indeed this asymmetry provides the incentive for it to try to 'catch up' with Scotland and serves in this respect to be compared to Spain where the 'historical nationalities' of the Basque Country, Catalonia and Galicia were allocated greater powers and competences than the other fourteen Autonomous Communities in the 1978 Spanish Constitution. In Italy the period from the ratification of the 1948 Constitution up until the early 1960s created twenty so-called 'Regions' but five of them were singled out as 'Special' Regions: Sardinia; Sicily; South Tyrol; Friuli-Venezia-Giulia; and Valle d'Aosta. This kind of asymmetrical devolution in the formally non-federal UK, Spain and Italy has been both the source intermittently of a federal discourse and a viable alternative to 'federalisation'.

In the UK case it is interesting to note that the main obstacle to a more symmetrical devolution has always been and remains today the size of England which dominates the Union with approximately 53-54 million inhabitants from a total of 65 million people (5-6 million in Scotland; 3-4 million in Wales; and 2-3 million in Northern Ireland) and a colossal economic power house in London and the south east area. And as in Italy there is clearly a distinct North-South divide with the post-industrial North struggling to maintain living standards well below those of the South. Indeed the structure of the larger political economy of the UK clearly reveals a massive gap in the major economic

indicators between England and the three devolved 'nations' on the territorial periphery of the multinational state. But if these nations have been granted differentiated devolution in the state structure it has not solved the problem of how to bring England and the English into line with its own form of devolution. There have been many attempts in the twentieth century to square this circle. If the Scottish, Welsh and Northern Irish people each have their own form of self-government, what about the English? In short, how can we apply devolution to them in a way that also provides them with some form of self-government? Given the stark realities of economic and political dominance outlined above, the logical proposal would be to create an English Parliament separate from the existing Westminster Parliament which would serve the whole of the UK. But apart from the cost of this kind of devolution for such a large population and the increased legislative – executive complexity that it would introduce into the UK, there has been no call for it by the English population. There have been voices in favour of 'English laws for the English' in the current Westminster arrangements which would prevent their affairs from being subject to the elected representatives from Scotland, Wales and Northern Ireland who can still vote on English policy matters in the House of Commons when English Members of Parliament (MPs) cannot vote on those public policies which have already been devolved to these three nations. This is famously referred in the UK as the 'West Lothian Question' named after the Labour MP, Tam Dalyell, who represented that constituency and who in 1978-79 first raised the constitutional anomaly during devolution debates in the House of Commons. (Hazell, 1999)

However there also remains a basic problem with this kind of arrangement in terms of being able to define precisely what would constitute 'English' laws that do not affect the other nations. Recent developments in devolution terms include the creation of the elected London Assembly and the separately elected Mayor that together look after the interests of the Capital City of the UK with a large budget supported by both Westminster and the people of London. This success story presages the introduction of elected mayors in the large 'regional' cities in England such as Manchester, Liverpool, Birmingham, Leeds, Newcastle and Bristol and strongly suggests that these 'islands' of local democracy and increased financial autonomy in the Midlands and the North of England will go some way to addressing the concerns of citizens outside of the international capital who have felt for many years that the Westminster government ignores them and works only in the interests of those living in the south-east. The last Conservative-Liberal coalition government (2010-15) spoke boldly in terms of a future 'Northern Powerhouse' based around new infrastructural investment and transport communications and Manchester in particular has been singled out as the leading local government authority and likely hub of these proposals with Westminster looking to grant increased powers and competences not conventionally to local county council governments but instead to the largest most economically vibrant city in the North of England. In this way new elected city mayors will be granted powers to make decisions for their own large urban constituencies that will, like London, address the primary interests and concerns of local citizens as well as post-industrial and new investment projects for the local economy in general. The fundamental objective is to abolish the North-South divide by transforming the Northern economy and improving its links to London with a new railway project – the High Speed 2 – that will markedly reduce the time it takes travel there and strengthen business cooperation. Manchester Airport is already a thriving international transport hub offering easy access to the North and is well placed to keep growing in tune with the British government's larger goal.

This brief sketch of contemporary developments in England suggests that they should be seen in the context of a new form of devolution which creates islands of economic and political authority centred upon the places where most people live and work. It is designed to leapfrog the usual implacable problems associated with English devolution that involve constitutional reform by creating a new parliament or new so-called

‘regional assemblies’ for which, with one exception in the North-East, there has been very little local demand. We will return to the case of England in the next section of the paper but suffice it to say here that the problem of England in the UK in terms of devolution has provoked much soul-searching in the established political class and an intermittently controversial constitutional and political discourse since at least the late nineteenth century so that much ink has been spilled by academics, lawyers and politicians in attempting to ‘fit’ it into a kind of ‘Procrustean Bed’ that simply will not work without – to follow the metaphor - chopping off somebody’s legs. In other words, England is simply too large to be accommodated in any scheme unless it is in some way broken up into smaller units like Swiss cantons or US states.

In summary, devolution is not federation but it can be a very effective approach to managing and in some cases resolving problems associated with citizens’ grievances in terms of local political representation, executive power and accountability and the recognition of socio-economic preferences in the form of for example the redistribution of economic resources springing from and directed toward local interests. Let us turn now to look at the phrase ‘federal devolution’ and in so doing further clarify the conceptual distinction between them.

V. FEDERAL DEVOLUTION

In the final section of this paper we will look at the phrase ‘federal devolution’ in respect of how and why established federal states continue to use it but it is also important to construe it in another way: that of a deliberate political strategy which is intended at some undetermined point in the future to facilitate a gradual shift toward a fully-fledged federation. In this light, devolution is the first step toward formal federation. However there is a third way of looking at this and it is a sketch outline of a series of real events that took place in the UK approximately a century ago. I want to begin this section therefore with a return to the brief case study of the UK polity in order to illuminate a particular episode in British constitutional and political discourse during the period 1900-14 that captures many of the current dilemmas and difficulties immanent in seeking not only to address the question of the larger polity but also the problem of what to do with England. We might regard it as a sort of dress rehearsal of the public debate and political discourse that we are having today. As we will see, it contains virtually every argument and reform proposal about federal devolution that informs public debate today. And importantly the same phrase ‘federal devolution’ was popularised as a catchphrase to include all sorts of different ideas and proposals designed to reform the state structure. These are, if you like, shadows of the past that are indelible and continue to fall across contemporary public debates about both devolution and a federal UK.

Federal devolution at this time was known widely as “Home Rule All Round” and it was prompted by attempts to solve what was then referred to broadly as ‘the Irish Question’. However in redirecting our focus to the UK polity during this period of modern history we will directly encounter the ubiquitous figure of the young Winston Churchill who having left the Conservative Party in 1904 to join the Liberals, played a key role in consistently championing the cause of federal devolution. In hindsight this may come as something of a surprise given his unquestionable devotion to British parliamentary government, his return later to the Conservative Party and his equal devotion to it, becoming Prime Minister during 1940-45 and again in 1950-55, but however unlikely we may in retrospect regard his political activities in hot pursuit of radical far-reaching constitutional reform of the state structure, he did produce some quite remarkable proposals and plans to, as he saw it, completely revamp or ‘federalise’ the UK. There seems to be a scholarly consensus that the period 1900-14 represented a distinct phase in the re-emergence of federal ideas in the UK. The historian of this particular period,

Patricia Jalland, regarded the 1910 general election, prompted by the constitutional crisis precipitated by the irresponsible behaviour of the House of Lords, to be the turning-point in this revival because the new Liberal government led by Herbert Asquith was empowered not only to secure approval of the Parliament Act of 1911 but also to fulfil a long-standing pledge to the Irish nationalists to introduce a third Home Rule bill (Jalland 1979). This explains why in early 1911 the question of UK devolution was raised when a Cabinet Committee of 7 ministers began its task of discussing the form that this third Home Rule bill might take. Two of the members of this committee were Winston Churchill and David Lloyd George, a Welsh radical and future Liberal Prime Minister, both of whose practical ideas, if implemented, would have had enormous implications for the British Constitution. The first such proposal was the logical corollary of “Home Rule All Round” that included the ‘English Question’ as well as similar legislation for Scotland and Wales and impelled Lloyd George to observe in provocative Welsh terms that in England ‘the progressive North would never submit to be placed under the control of the semi-feudal South:

But in order to obviate the inconvenience and injustice which would arise in the interregnum owing to Irish members interfering with purely English, Scottish and Welsh affairs a system of Grand Committees must be set up simultaneously with the Irish HR Bill with full and final legislative powers in English, Scottish and Welsh affairs of the same character as those delegated to the Irish Parliament. (Jalland, 1979)

In hindsight his proposal was made the more practicable because it actually deferred addressing ‘the English Question’ by putting in its place a temporary plan of action – the Grand Committee system whereby legislation relating exclusively to England, Scotland and Wales would be processed by committees composed only of members drawn from the territorial areas concerned – which was actually incorporated in the new Irish Home Rule Bill formally titled ‘Government of Ireland and House of Commons (Devolution of Business) Bill’. The question of “Home Rule All Round” was eventually discussed in full Cabinet in December 1911 but Lloyd George’s scheme fell at the first hurdle after a groundswell of elite opinion led by the Irish Nationalists forced it off the agenda.

Turning to Churchill’s initiative, historians confirm that his official conversion to “Home Rule All Round” occurred in February-March 1911 when he circulated two memoranda in the Cabinet Committee and identified three main problems that continue to resonate in the early twenty-first century. They were the following:

- 1 If separate parliaments were established in Ireland, Scotland and Wales, was England to be given one or more assemblies or were English affairs to be dealt with by the Imperial Parliament?
- 2 Could the problem of English devolution be resolved by dividing the UK into ten segments each with its own assembly for legislative and administrative purposes? In Ireland, Scotland and Wales these assemblies would be parliamentary while England would be carved up into seven assemblies with more limited powers such as education, housing, land and police. The Imperial Parliament would therefore remain unaltered and would retain all powers not specifically devolved.
- 3 Could these proposals for the rest of the UK be announced at the same time as the Irish Home Rule Bill in preparation for their introduction in a separate bill the following year?⁴

Churchill reappeared in September 1912 to relaunch his early 1911 proposals that, like Lloyd George’s, had been rejected by the Cabinet Committee in what has been until

4. For an excellent discussion of Churchill’s scheme, see (Jalland, 1979).

recently a relatively neglected speech in Dundee, Scotland. And no better example of the enduring contemporary significance of the reasoning, the urgent challenges and the attendant problems of his proposal can be proffered than Churchill's so-called "federal kite". Without claiming to be a dedicated enthusiast for Irish Home Rule, he nevertheless saw it as the major stumbling-block to the pursuit of the Liberal government's economic and social programme and he became convinced as the months wore on that the problem of Ulster in Irish Home Rule had to be confronted directly and this led him to advocate the temporary exclusion of at least some Protestant counties of Ulster from the next Irish Home Rule Bill. In this way he established a solid link between federal devolution and the Ulster question.

Having decided in this speech that the main problem in introducing "Home Rule All Round" was the position of England, he chose to confront the obstacle in direct fashion. He roundly declared that he was 'not in the least disturbed by the prospect of seeing erected in this country 10 or 12 legislative bodies for discharging the functions entrusted to them by the Imperial Parliament' and he suggested that separate legislatures could be created in, for example, in the counties of Lancashire, Yorkshire, the Midlands and in Greater London. But clearly if England could be divided like this then it was perfectly feasible for Ulster, or some portion of it, to be considered as a separate parliamentary unit in Ireland. However in practice this speech served to weaken the Liberal government's official policy on Irish Home Rule for the simple reason that if England could be fragmented into 10 or 12 separate units, then the opposition to Ireland having at least two such units was indefensible. It might solve the 'Ulster Question' but in all likelihood only at the price of a truncated Ireland.⁵

Churchill's Dundee speech was of course purely speculative and he conceded that he spoke only for himself and not as a government minister, but we can see that not only had the idea of breaking up England into small constitutional units already been ventilated in public just over one century ago; it had also been considered as a practical albeit radical proposal. Churchill had indeed been flying a kite and if it was widely considered as unacceptable among most of his contemporaries it at least had the merit of using the policy of Irish Home Rule in an imaginative and expansive manner, one that construed it not as a singular policy isolated from the other parts of the UK but rather one that could have important constitutional implications for them as well. On this reckoning it could have helped to resolve the Irish Question by finding space for Ulster autonomy in a devolved Ireland, removing the obstacle of England and granting devolution to both Scotland and Wales. In linking these problems together each as part of a much larger scheme, this would truly have been "Home Rule All Round". In hindsight we now know that even the leader of the Ulster Unionists, Sir Edward Carson, had privately concurred with Churchill's plan to the extent that if Ulster exclusion was to be the future it would be better incorporated in a larger scheme of UK-wide devolution than as an anomaly. Consequently if we look back at Churchill's 1912 Dundee speech it now appears less speculative and was perhaps not as absurd as many of his contemporaries initially regarded it.

Several points are worth making about this remarkable period in British politics in 1911-12. First the role(s) played by Churchill and Lloyd George were irrepressibly radical in their imagination and originality and their combined efforts to promote federal devolution in the UK revealed a unique willingness to 'step outside of the box' in order to meet the contemporary challenge of constitutional reform and the reconstruction of the British state. Secondly, it demonstrated how far the language and terminology of federalism had not only permeated the mainstream political discourse on UK reform but it had

also reached the inner sanctum of British cabinet government as a practical proposal to be taken seriously. Terminological precision was of course sacrificed to the pressing needs of public debate and the ventilation of fresh ideas about the correspondence of multinational state structures with a multinational society. Thirdly, this episode was peculiarly prophetic in the extent to which the role, integrity and status of both England and Ulster proved to be such intractable obstacles to overcome in a reconstructed UK, problems that have endured into the twenty-first century.

Finally it is important for us to note that in the specific context of this historical episode in British parliamentary politics the terminology among the political establishment was usually nebulous. It did not seek to define terms precisely so that the popular phrase ‘Federal Devolution’ was interpreted as very elastic and could be stretched to include a myriad of schemes and plans. From the conceptual standpoint it was a case of overlapping concepts and ambiguous plans. While we cannot expect practising politicians and public figures to entertain intellectual concepts of political theory, it is nonetheless important to note that these terms were used in a very loose and lazy manner. Indeed, distinct terms like federal, federalism, federation, devolution, home rule, decentralisation and local government reform were used synonymously to elide into one another to produce broad labels and phrases such as ‘federal devolution’, ‘federal home rule’ and ‘home rule all round’. The ‘word’ or the ‘phrase’ did not always mean the ‘thing’ but there is nevertheless some mileage in the argument that this flexibility and elasticity encouraged all kinds of imaginative and innovative ideas, plans and proposals that were not always far-fetched and in some cases were quite sophisticated. Federal devolution never really corresponded to the constitutional and political reality of federation, that is, a federal state. This was widely understood at that time in terms of the classical federal model of the United States and in this sense it was never really taken seriously to mean this by its proponents. Very little of this veritable outpouring of political literature during these years included genuine federal schemes for the UK but it is also true that as Lord Loreburn observed the accuracy of the terms – this ‘cloud of phrases’ – were less important than the idea behind them.⁶

Having included a brief cameo of the adventures of federal devolution in the UK just over a century ago, it is appropriate for us to consider what it means today in political theory and practice. We have already examined the concept of devolution above and at first glance it might be construed in a binary sense, that is, states are either formally federal or formally non-federal and the adoption of devolution would seem to be something applicable only to the latter case, such as the UK, Italy and Spain. In other words it can be portrayed as either federation or devolution as a constitutional choice. This would be a mistake because the two concepts mean different things. Federation has a higher conceptual status than devolution; the former is about state-building and the operation in practice of federal values and principles expressed in the division of powers and competences entrenched in a written constitution while the latter is generally understood to be about decentralisation and/or administrative de-concentration handed down by a constitutionally superior political authority. Consequently the meaning of federal devolution today refers simply to federal states that resort to some form of devolution in practice. This may or may not require formal constitutional amendment depending on the federation and the context or prevailing circumstances of federal politics.

In terms of decentralisation we must recognise at the outset that formally federal states are no less immune to centralising trends than are formally non-federal states. Consequently past indices of centralisation/decentralisation have confirmed that some

federations, like Australia, Austria, Nigeria and now the Russian Federation are much more centralised than either Belgium or Canada while Switzerland has always occupied the space on this spectrum of being the most decentralised formal federation in the world. Consequently we can see from this perspective that different forms of devolution apply in some formal federations than in non-formal federations because formal federations already have established institutions at both the federal and constituent unit levels together with a division of competences and power-sharing processes that are entrenched in a written constitution. And these processes of power-sharing are lubricated by a complex process of federal ministers in different public policy fields meeting with their counterparts at constituent state level such as Swiss cantons, German lander, Canadian provinces and US states in what in Canada are called 'federal-provincial relations' but which are generally referred to as 'intergovernmental relations (IGR). Since these are primarily meetings of premiers and ministers and civil servants in IGR, this has given rise to the term 'executive federalism' and it has been the source of much tension in some federal states where legislative-executive relations have effectively excluded parliaments and local governments/communes from decision-making. Decentralisation in formal federations can but does not necessarily involve formal constitutional amendment. It can take place simply by intergovernmental agreements and we must also mention judicial decisions that can also have a decentralising or a centralising impact upon the federation. Supreme Court judgements in Canada and the USA and the Constitutional Court in Germany have in some legal cases reached decisions that can have an impact in both directions and most of the research tends to identify historical periods or phases where centralising and decentralising trends can be discerned. Nonetheless, there is a broad scholarly agreement among both political scientists and lawyers that the overall impact of these judgements has been in a centralising direction for most federal states, often construed as promoting (multi)national integration. This is also the case with the European Court of Justice (ECJ) in the European Union (EU) which has made a catalogue of important judgements in various *cause celebre* since the 1960s that have promoted the cause of European integration.

The second approach to federal devolution which we identified above refers to it as a political process, that is, a political strategy designed to take a series of gradual steps to achieve formal federal state formation. In itself this interpretation raises a very interesting and important question: 'Is it possible to shift from a position of incremental devolution to formal federation?' Put another way, 'Can devolution be utilised as a political strategy to achieve formal federation?' Logically this question acknowledges the conceptual distinction between two different 'things' but it is not quite as simple and straightforward as it might at first seem to be. For example, devolution in the UK today has developed in such a way that although in the world of constitutional law it may be possible to sustain the proposition that devolution can be given by a higher central authority to lower bodies and taken away again by that authority if it so desired, this exists only in legal theory. In reality it would now be impossible to do this in practice. Here we shift from the legal theory to political practice. Consequently we can see that the underlying dynamic in the UK already constitutes a gradual transformation from *intragovernmental* meetings with Whitehall ministers and senior civil servants to *intergovernmental* relations between them in the political system of the Union state. An increasingly complex process of joint ministerial committees has evolved between British government ministers and officials and the 'First' ministers and their officials in Scotland, Wales and Northern Ireland. It is precisely this kind of qualitative change in the operation of British devolution that both reflects and reinforces the emergence of a new British political culture in the devolved administrations that confirms the changes in citizens' attitudes and expectations of their own executive authorities.

Before we bring this section to a close, it is useful for us to remember that one of the best examples of how incremental devolution led to formal federation is Belgium. A brief

analysis of the Belgian case ably demonstrates that it took approximately 25 years from the late 1960s up until 1993 when it finally 'Crossed the Rubicon' into a highly elaborate and sophisticated formal federal statehood. This long term process of federalisation has evolved via a series of formal and informal procedural arrangements and agreements between the three distinct linguistic communities: Flanders (Flemish-speaking), Wallonia (French-speaking) and Eupen/Malmedy (German-speaking). However since 1993 it would appear that this process has not stopped. Having built formal federation by this process of federalisation, there have been significant developments in the body politic that have moved beyond this federal destination. There has been a continuous process of what scholars have called a 'hollowing out' of the state as more and more powers and competences have been handed over by the federal government in Brussels to the constituent parts of the federation, pushing it more and more from federalisation to a new form of confederalisation that has served gradually to enfeeble the federal government and strengthen in particular Flanders and Wallonia. The emergence of the Brussels Capital itself as another distinct political identity with its own 'regional' government has also been a major feature of these contemporary developments and events in the early twenty-first century. We do not know how far these strong decentralising trends in Belgium will proceed in the future but they do seem to be moving in the direction either of a new form of confederation - where two constituent units will be stronger than Brussels - or independence for both Wallonia and Flanders.

VI. CONCLUSION: OVERLAPPING CONCEPTS AND IMPRECISE DEFINITIONS

In this paper we have analysed and explored the conceptual meaning and empirical implications of federalism, federation, devolution and federal devolution in pursuit of clarity and understanding. We have concluded that there remain important conceptual distinctions between these terms but that there have been and still are areas where they can be blurred and indistinct and can even overlap in practice. We have also demonstrated that devolution is not federation but that it is quite common for formal federations as well as non-formal federal states to introduce devolution when the circumstances require it. Furthermore we have recognised that there can be cases where devolution evolves to the point where it can create the conditions for formal federation even if in the majority of cases this has not happened. Devolution must be distinguished from federation which has a higher conceptual status but it nonetheless stands as a separate concept in its own right. It is therefore a perfectly viable alternative to formal federation in practice and has the capacity to evolve in quite advanced forms and levels of political authority within existing formally non-federal states.

This analysis and exploration raises many important questions about the relationship between the conceptual and the empirical worlds. It acknowledges for example that we must always be vigilant when these two worlds engage each other because the empirical reality of contemporary change often has the effect of rendering our established concepts either irrelevant or completely redundant. We are reminded that it can reduce their conceptual utility if the concepts no longer explain the political world we inhabit. It is in this sense that concepts are always in pursuit of empirical change – what is actually happening - in order to catch up with practical reality. If they cannot any longer help us to explain and understand the world we live in, then we must either discard or revise them to try to capture the new realities.

Concepts shape meaning, understanding and perceptions of reality but they are rooted in different contexts. In the cases of devolution and federation there will always be important questions to ask and it will not be easy to anticipate these new, largely unforeseen, realities in the quest to explain contemporary change. This means that it is

highly likely that we will live in a new terminological age of overlapping concepts and imprecise definitions where flexibility and constant re-classification will be required. In other words, there will be new models of federation and devolution, especially if we consider current contemporary events and developments concerning the constitutional futures of Myanmar, the Philippines and Kurdish policy preferences in Syria and Iraq. This, then, is the big picture and if nothing else it suggests that so-called 'federal tendencies' in the world at the levels of political discourse and (multi)national or (multi)ethnic conversations among majority and minority elites remain alive and well. The federal idea endures as a way of thinking about the future not only of post-conflict societies but also of authoritarian states that might consider the federal option in its many forms as a viable practical proposition to buttress the state in pursuit of political and economic stability. Put simply, it might be a price worth paying if the alternative is worse.

Returning to look at Europe, there are still four established federations consisting of Switzerland, Germany, Austria and Belgium and the federal-confederal EU (notwithstanding the British exit) that has plans to achieve closer economic integration by extending economic and monetary union principally via the European Central Bank and the euro currency to create a fiscal union related to common taxation revenues and expenditures. It is too soon to make any judgements about this but it looks increasingly that it might be limited in the current economic climate to a small number of members whose national economies are deemed strong enough by the European Council and the Commission to make it viable. If and when this happens it will certainly strengthen the federal elements in the EU and in terms of this paper it will accentuate the existing asymmetries of membership by opening up a new policy space in the direction of more integration in Euroland which some commentators and observers construe as a distinct centralising trend transferring more powers from (multi)national member states. The existing member states that have already opted out of this project like Sweden and Denmark will likely consider this a step too far for them while remaining in the EU which in a sense operates institutionally in parallel with Euroland. Consequently its success will depend largely upon those member states already in Euroland that will remain there but will not necessarily be part of the nucleus of states moving further forward with fiscal integration. This remains to be seen.

Meanwhile devolution not federation appears to be the preferred route for both Italy and Spain whose respective written constitutions have omitted the federal option and instead have chosen a different pathway in terms of structural state reformation. In Italy a national referendum in the early 2000s rejected the federal option while in Spain it has never been a realistic practical proposition and according to the Spanish Constitution it remains formally a 'Parliamentary Monarchy'. Indeed, the Constitution mentions federation only once and in an emphatically negative way in Article 145 which clearly declares that 'Under no circumstances shall the federation of Autonomous Communities be allowed'.⁷ Consequently it has come as little surprise to learn that the ACs have developed a network of limited bilateral arrangements both with each other (with more extensive formal cooperative agreements subject to the *Cortes Generales*) and in some cases with the Spanish government in Madrid. This cooperation has been actively encouraged by its official consecration in Article 145(2) in the Spanish Constitution⁸ and it is the operation of this network of bilateralism in practice that has persuaded some political scientists to refer to Spain erroneously as a 'federation' or a 'quasi-federal state'.

7. Article 145(2), Spanish Constitution 1978

8. Ebd.

What these cases indicate is that federalism as we have defined it above exists in Italy, Spain and the UK but not formal federation. There are strong federal elements in them in practice and there remains a vibrant federal discourse that continues to make a positive contribution to (multi)national conversations about the constitutional futures of each state. In keeping with this statement, Kezia Dugdale, the leader of the Scottish Labour Party and the former British Prime Minister, Gordon Brown, have both recently in 2017 adopted a new policy that advocates a federation of the UK. The proposal is a reaction to the British government's determination to leave the EU in the wake of the (multi) national referendum of June 2014 that voted narrowly (52-48 per cent) for a British exit – called in popular parlance “Brexit” – and is designed to provide the Scottish electorate that voted 62-38 per cent in favour of remaining in the EU with an alternative choice to Scottish independence trumpeted by the Scottish National Party (SNP). The terms currently being circulated in the language and political discourse of this radical policy initiative are ‘Federal Home Rule’ and a ‘federal UK’ and the idea is that when the UK formally leaves the EU powers like agriculture, fisheries, trade treaties, environmental regulation and energy policy that will be repatriated from Brussels will be handed over to Edinburgh rather than London. This party policy is currently at odds with the mainstream British Labour Party in London and it has not yet moved forward beyond mere public statements but it reminds us that we have been here before one century ago. If ‘federal devolution’ is persistently pursued, the shadows of the past in terms of the public debate on the eve of the First World War and during that conflagration are likely to be rehearsed in 2017. It also confirms the validity of our UK case study briefly examined above.

These conceptual and empirical reflections bring the paper to a close but in doing so it is important to take from it the sense that federation, devolution and federal devolution will always continue to inspire future political elites and mass publics to consider new federal and devolution models. Ultimately this is because they engage with the organisation of human relations in ways that accommodate and respect difference and diversity in its many varieties.

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