

Two Cheers for the Concordat

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Introduction

French local government practice is set out in the Constitutional Code. The relationship between central and local governments is characterised in the following terms:

the autonomy guaranteed by the Constitution has to be respected by Parliament when regulating local government by law, as it is entitled to do ... There is a core – *undetermined* – which should not be infringed by acts of Parliament.¹

So it's not just us. An element of uncertainty and indeterminacy runs through relations between central and local government. However, the historic informality of the UK's constitutional arrangements, coupled with the emergence of a powerful central executive, has meant that 'undetermined' arrangements have worked against local government and contributed to the extraordinary degree of centralisation seen in the UK – or, more recently, in England – in recent decades.

Gordon Brown's announcement in the summer that a Concordat between central and local government should be examined, while almost cryptic in its lack of detail, raised the intriguing question of whether and how the relationship could be more clearly defined, and if so in whose interests this would work. The Concordat was negotiated and duly signed on 12 December.

What does the Concordat do?

Speaking some months before the Concordat was signed, the LGA chairman Sir Simon Milton insisted that it would 'need to go beyond unexceptional commitments to partnership and a

1. Cit. *The Constitutional Status of Local Government in other countries*, The Scottish Office Central Research Unit, 1998, p.5

description of the status quo.² The critical question in assessing the Concordat is how far this has been achieved, and how far it simply codifies existing practice.

There is certainly plenty of the latter in the document; if nothing else, it will be of interest to historians in capturing

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much of the intellectual journey that government has undergone in recent years. On the positive side for localists, this has meant a reduction in the hugely onerous performance management regime imposed through

Best Value and the CPA process. There has also been a growing recognition, glimpsed first in the 2000 Local Government Act's power of well-being and consolidated through an increasing role in health and in the LAA process, of local government as community leader (and, of course, 'place-shaper') as opposed to a provider of a limited range of services.

More negatively, there has been constant timidity on the finance issue; even the revised performance regime ('only 200 indicators') has few if any parallels elsewhere; and while government speaks of an enhanced role for democratic local authorities in one breath, in the next it transfers powers to unelected regional bodies. In addition, the community leadership role under LSPs and LAAs, while preferable to many of the alternatives, is blurred by complexity and uncertain accountability.

Thus, in encapsulating current practice, it is little surprise that the Concordat makes reference to core texts such as the *Strong and Prosperous Communities* White Paper and the 2007 Act. The resulting Performance Framework and new-style LAAs are also endorsed, as is general partnership working (clause eleven) and the 'double devolution' emphasis on the need to 'engage and empower communities and individual cit-

2. Sir Simon Milton, *Central Nervous System: Can Localism help Gordon Relax?* London: Localis, November 2007

izens ... in debate and decision making and in shaping and delivering services.³ The sub-national review is not mentioned, but there are occasional sightings in references to councils' responsibility for 'prosperity and well-being' and 'social, economic and environmental well-being.'

Perhaps inevitably, some of the statement of current practice makes bland fare, such as the last sentence of clause one:

We believe it is the responsibility of elected politicians and appointed officials in central and local government to ensure that local places and public services [continually improve in quality and efficiency], for all citizens, in every part of the country, so that everyone can enjoy a better quality of life.⁴

It's hard to quarrel with that.

Direction of travel: improving

Elsewhere, however, there is more meat. The document makes clear that local government is not to be viewed simply as a creature of the centre, equating its local electoral mandate(s) with that of national government. This is not perhaps so surprising; if we go right back to central government's response to the Layfield Report, there was no appetite for any explicit decision that cast local authorities in the explicit role of agent of the centre (but this did not stop a general move towards centralisation). What was perhaps less expected was a positive and explicit commitment to the principle of subsidiarity, when the report states that:

In delivering these objectives [of governance], there should be a presumption that powers are best exercised at the lowest effective and practical level.⁵

3. Central-Local Concordat, 12th December 2007, Clause 12

4. *Ibid.*, Clause 1

5. *Ibid.*, Clause 4

This striking commitment at the end of clause four finishes off a list of governmental responsibilities and implies that the issues included on that list – creating sustainable communities, anti-social behaviour, health, nurturing business and the third sector, safeguarding the environment and promoting pluralism – are best managed from a local level rather than from a national level.

However, the Concordat is not just about current practice; there is also quite a lot of ‘direction of travel’, and this is quite favourable – in some cases, surprisingly so. If we were to carry out a localist CPA (if such a thing could be imagined) of the Concordat, it might rate only two stars but be considered to be ‘improving’, perhaps even ‘improving strongly’.

Clause two asserts that the present moment is one for ‘significant and lasting change ... [to] set a new a baseline for relations between central and local government.’⁶ This is an obeisance to recent legislation, but clause six has an explicit commitment to enhancing the role of democratically elected authorities in local ‘governance’:

The LGA and central government will work together to encourage all councils to make effective use of the well-being power and to conduct a *growing share* [emphasis added] of the business of government.⁷

The later pledge ‘to increase local democratic accountability of key public services, in particular the police and health services’⁸ is open to a variety of precise interpretations, but at least seems to point in a similar direction.

To this can be added clause nine, which pledges to continue recent moves to reduce central controls. This is not wholly new, but it is clear:

[Central government] undertakes to progressively remove obstacles which prevent councils from pursuing their role,

6. Ibid., Clause 2

7. Ibid., Clause 6

8. Ibid., Clause 16

including reducing the burden of appraisal and approval regimes, the ring-fencing of funds for specific purposes and the volume of guidance it issues.⁹

By many accounts, finance was a critical sticking-point at the very end of the talks. The government seems to have been persuaded to show the tiniest bit of ankle, promising to ‘work towards giving councils greater flexibility in their funding’ and citing the European Charter of Local Self-Government.¹⁰ The latter reference is intriguing. On the one side, the UK has been signed up to the Charter, with little obvious effect on government attitudes and actions, since 1997. However, Article 9.4 of the Charter, to which the Concordat makes no direct reference (restricting itself to the more anodyne preamble) states that ‘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.’ It is hard to recognise the current system within this description.

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This leaves the door open to some of the very long-term changes that were given cautious endorsement in the Lyons Report, but only just.

No guarantees

Encouraging though many features of the Concordat are, there are also some reminders of current realities. The imbalance between the central and local ‘partners’ emerges in clauses five and six that start the definition of their rights and responsibil-

⁹. Ibid., Clause 9

¹⁰. Ibid., Clause 15

ities. Central government has ‘the over-riding interest’ in various areas, including ‘public service improvement’, whereas ‘Councils have responsibilities for service performance’. This brings us closer to the role of local government as a delivery arm of the centre.

Clause ten states that ‘Councils have the right to address the priorities of their communities as expressed through local elections ... without unnecessary control.’ Who is the arbiter of necessary and unnecessary controls? It is in this area that the

Concordat is silent. While the central-local relationship is described in collaborative terms (‘central government has the responsibility to consult and collaborate with councils in exercising [its] rights¹¹’), in truth

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one ‘partner’ has the ability to change the rules of the game. To a certain extent this will always be the case – national government will inevitably have the last word – but the question is the ease with which it can be done in this country. There is no institutional machinery to make unilateral change more difficult and to strengthen local government’s position.

Such machinery could take the form of constitutional entrenchment of local government’s role and rights, either as part of a written constitution or through a parliamentary convention. An alternative mechanism – though the two are not mutually exclusive – is to give local government a role in central decision-making, so that it is not simply a subject of the decisions of the central executive. Some options were canvassed by Sir Simon Milton in his address to Policy Exchange and Localis in September, including a share of seats for local government in a reformed upper house; representation of local authorities on regional select committees; enhanced pre-scrutiny for legislation that councils will be required to

11. Ibid, Clause 9

implement; and a constitutional convention, approved by Parliament, defining and entrenching local councils' rights.

There are other possibilities, such as mechanisms to make the cavalier and often partisan reorganisations that have been carried out over recent decades much harder to achieve. Denmark and Sweden have requirements for an election or referendum to have taken place before a reorganisation can be completed; in his book *The British Constitution Now*, Ferdinand Mount argued that such reorganisations should be among legislation requiring a super-majority.¹² Full examination of these possibilities is outside the scope of this paper, but we intend to return to a fuller examination of the constitutional status of local government in other countries in subsequent work.

Conclusion: the core issues

If constitutional status is at the core of the inequality in central-local relations, finance cannot be ignored. The modesty of the Concordat's provisions on finance has already been commented on, but at least the reference is there. If it is a wedge, it is a very thin one; still, it should be possible to work from this towards some of the reforms hinted at by Lyons (for example, assignment of a share of national taxes) or the more radical but still realistic options canvassed by Policy Exchange in recent years.¹³

Both CLG, on behalf of national government, and the LGA, representing local authorities, can be reasonably expected by the policy community to address other core issues in the continuing talks that they have promised to undertake. These should include the performance management regime – at the very least ensuring that CAA delivers on its promise to be more locally focused than the existing system – and the issue of sub-

12. Ferdinand Mount, *The British Constitution Now: Recovery or Decline?*, London: Heinemann, 1992, pp. 203-05.

13. *The Decline and Fall of Local Democracy: A History of Local Government Finance*, (2003) *I'm a Local Councillor: Get me Out of Here!: England's system of Local Government Finance*, (2004) and *Nothing to Lose but your Chains: reforming the English local government finance system*, (2005) all T. Travers and L. Esposito.

national government. In many European countries, a co-ordinating or supervisory role is played by a level of sub-national government that is above localities; we can think not only of

German Länder, but also Swedish or Danish counties, or regional government within a unitary state such as France. What is peculiar in the UK is that this tier, insofar as it exists, is unelected, and the provisions for planning and housing

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powers under the sub-national review would strengthen this. There are alternative routes to addressing the problem, whether by returning powers to existing upper-tier authorities, enhancing democratic local authority control over the regional tier or building up MAA areas to take on this role and act as interlocutor with the centre.

Lastly, it is worth noting that local government clearly has an interest in the wider constitutional reform debate, not simply those parts of it that impinge directly on its own powers. The Concordat emphasises that ‘central and local government both derive their legitimacy from Parliament’.¹⁴ On paper, this offers some encouragement, but begs the practical question of the relationship between the executive and Parliament; the greater the independence of the latter, the more protection it can offer to local government. The strengthening of both houses in relation to the executive will be an important safeguard.

The current status of the Concordat is ambiguous. It is little more than a statement of intent, albeit one about which the parties have committed to continue discussions and revise over time. Interestingly, the proposed revival of the Central-Local Partnership as a forum for discussion could also provide a forum for councils to raise concerns if some central government departments act in ways that conflict with the Concordat’s spirit.

¹⁴ Concordat, Clause 3

If, however, some form of new constitutional settlement is achieved – as the Prime Minister clearly wishes – whether through a written constitution or, more probably, through a variety of less formal means, then the Concordat could be an element of that settlement. And for localists, some elements of this would be more welcome than others. Nonetheless, given current conditions, the document represents a start, and something more than a start.

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Appendix: the Central-Local Concordat



CENTRAL-LOCAL CONCORDAT 12 December 2007

This agreement, made between Her Majesty's Government and the Local Government Association, establishes a framework of principles for how central and local government work together to serve the public. Central government departments and councils commit to uphold these principles¹. This meets a commitment in the *Governance of Britain* Green Paper, published in July 2007. These principles reflect the way in which the relationship between central and local government is managed currently. The Government is committed to constitutional reform and will work with the LGA to ensure that the roles and responsibilities of local government are reflected in proposals as they are developed.

1. Local areas face significant challenges, from globalisation and social and demographic change. Our citizens rightly place increasing demands on public services, based on their rising expectations and ambitions. To meet these challenges and aspirations, communities need strategic leadership and public services must continually improve in quality and efficiency and must treat everyone fairly. We believe it is the responsibility of elected politicians and appointed officials in central and in local government to ensure that local places and public services rise to this challenge, for all citizens, in every part of the country, so that everyone can enjoy a better quality of life.
2. Parliament passed the Local Government and Public Involvement in Health Act in 2007. This, alongside other policies set out in *Strong and Prosperous Communities* – The Local Government White Paper, marks a moment of significant and lasting change. Together, they set a new baseline for relations between central and local government. We will work to develop the relationship further from that foundation.
3. Central and local government both derive their legitimacy from Parliament and the electoral mandate granted to them by individual citizens who look to central and local government to take the lead in ensuring better places and better services.

¹ The LGA represents councils in England and Wales. The UK Government will, as far as appropriate, have regard to these principles in relation to the responsibilities which Welsh local authorities have in non-devolved areas. Relations between the Welsh Assembly Government and Welsh local government are governed by the Local Government Partnership Scheme, as set out in the Government of Wales Act 2006.

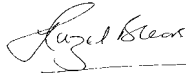
4. This means that central and local government are partners in delivering improved services and in strengthening our democracy. In particular, we share objectives to:
- create and sustain thriving communities, where people want to live, work, bring up their families and retire; where they can reach services; and with access to decent homes at a price they can afford;
 - tackle anti-social behaviour and crime and promote good health;
 - improve outcomes for children, young people and families;
 - anticipate the needs and aspirations of an ageing society through preventative measures that encourage greater independence and well-being for older citizens;
 - nurture business and enterprise, increasing skills and employment and creating wealth and rising prosperity, shared by all;
 - protect and enhance the environment, tackle climate change and pollution;
 - support a thriving third sector of local voluntary organisations, community groups and social enterprises;
 - promote a pluralist, healthy democracy with tolerance, decency and respect at its heart, without space for political or religious extremism; and
 - promote high standards of conduct in public life.

In delivering these objectives, there should be a presumption that powers are best exercised at the lowest effective and practical level.

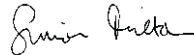
5. Central government has the responsibility and democratic mandate to act in accordance with the national interest. Acting through Parliament, it has the over-riding interest in matters such as the national economic interest, public service improvement and standards of delivery, and taxation.
6. Councils have responsibilities for service performance but also for the prosperity and well-being of all citizens in their area and the overall cohesion of the community. They have a general power to promote community well-being and a responsibility to do all they can to secure the social, economic and environmental well-being of their areas. The LGA and central government will work together to encourage all councils to make effective use of the well-being power and to conduct a growing share of the business of government.
7. In this relationship, there are reciprocal rights and responsibilities.

8. Central government has the **right** to set national policies, including minimum standards of services, to work with local areas to support them and, as a last resort, to intervene to avoid significant underperformance. It proposes to Parliament the legislation within which local government works.
9. Central government has the **responsibility** to consult and collaborate with councils in exercising these rights. It undertakes to progressively remove obstacles which prevent councils from pursuing their role, including reducing the burden of appraisal and approval regimes, the ring-fencing of funds for specific purposes and the volume of guidance it issues.
10. Councils have the **right** to address the priorities of their communities as expressed through local elections and to lead the delivery of public services in their area and shape its future without unnecessary direction or control.
11. Councils have the **responsibility** to provide leadership that is accountable, visible and responsive to their communities and to work in partnership with the local statutory, business and third sectors, and collectively to drive continuing improvement.
12. Both partners have the **responsibility** to use taxpayers' money well and devolve power, and to engage and empower communities and individual citizens – at national level and at local level – in debate and decision making and in shaping and delivering services.
13. Central and local government will also work together to deliver the Public Service Agreements set out in the Comprehensive Spending Review (CSR07) and the new Performance Framework set out in the White Paper and 2007 Act, through around 200 national indicators and a commitment to agree no more than 35 targets in any one area (plus statutory educational attainment and early years targets).
14. Central to these new arrangements will be the negotiation of new style Local Area Agreements between local partners and between them and Government, as the key means of agreeing, delivering and monitoring the outcomes for each area which are delivered by local government on its own or in partnership with others. We accept that this objective will require major changes in behaviour and practice from central government departments, their agencies, government offices, councils and local partners. We share a commitment to leading the effective implementation of the necessary changes.

15. Central and local government share a commitment to delivering services that represent value for money; to ensuring that public services, including new obligations imposed on councils, are properly funded; and that local taxation is guided by principles of transparency, clarity, and accountability. We will work together to provide greater clarity and transparency to local people on the levels of public funding going into local areas, and work towards giving councils greater flexibility in their funding, to facilitate the wide degree of autonomy referred to in the European Charter of Local Self-Government².
16. We will work together to develop a new relationship between local businesses and councils; to increase local democratic accountability of key public services, in particular the police and health services; and to explore options for reforming the adult care and support system. We share a commitment to working with the third sector, upholding the principles in the Compact.
17. The partners to this agreement will come together regularly in a renewed Central-Local Partnership. One of the roles of that partnership will be to monitor the operation of this agreement, and to revise it for the future as necessary.



Rt Hon Hazel Blears MP
Secretary of State for
Communities and Local Government



Clr Sir Simon Milton
Chairman
The Local Government Association

12 December 2007

² European Charter of Local Self-Government, Council of Europe, 1988, Preamble: "Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment."

About Localis

In a market filled with local government research initiatives, we believe that Localis makes a distinctive offering.

Localis offers a fresh and distinctive approach based on close links with Policy Exchange, Prospect's think tank of the year 2006-7. Localis aims to influence policy makers and thinkers outside the local government village in clear, jargon-free language.

We are at a crossroads in considering how we govern ourselves. Debate has moved on: across all political parties it is recognised that the centralising trend of the past three decades has not delivered. In theory at least, we are all localists now. From here our priorities are to ensure that:

- government and government departments really let go;
- the emerging regime of inspection and targets does make local government more answerable to residents, not to central government;
- the current, unsustainable finance system is overhauled,
- 'double devolution' really occurs – both of services to local governments and individuals and of enhanced community participation.

We need to move away from old-fashioned ideas of governance based on single coherent, geographically based communities. We need to look afresh at how best to ensure that communities – of whatever sort – are well served.

These questions are not party political. Localis is concerned to support the development of effective local governance as a whole.



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