



With a Little Help From Our Friends

International Lessons for
English Local Government



Roger Gough



Local Government Association

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Localis is an independent not-for-profit research and policy making organisation which was set up to develop new ideas for local governments and those who engage with them. It organises seminars and commissions research relating to all aspects of local government.

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Foreword

Central-local relations are once more at the heart of political debate. Britain – or, more precisely England – is among the most centralised of advanced democracies – if not *the* most centralised, and progress towards a new relationship is slow. This report, drawing comparisons with a number of Commonwealth and European countries, helps us understand what is distinctive about the balance of power in England, how we got to our current situation and the measures necessary to change it.

The challenges facing central-local relations in this country are not unique. Finance, performance management and local government structure are concerns across the peer countries discussed in this report. However, when we compare different countries' responses to these issues, England is almost always to be found at the centralist end of the spectrum. This reflects the informality of our constitutional arrangements, local government's lack of a proper seat at the national political table and the mismatch between English local government's quite extensive functions and its narrow tax-raising powers.

To revitalise English local democracy, we need progress in a range of areas, some of them very familiar, such as finance, performance management and the role of quangos. However, at the core of the report's findings is the degree to which, in the countries studied, local or sub-national government is at the heart of decision-making. Our analysis tells us that there is a comparable need for a more entrenched role for local government in this country's constitutional and decision-making arrangements.

While local government practices and experiences from other peer countries cannot always be read across directly, it is essential that we understand how systems work elsewhere, enabling us to learn from them.

LGA is delighted to sponsor this Localis report as a significant contribution to the continuing debate about central-local relations.

Margaret Eaton

Chairman, Local Government Association

James Morris

Chief Executive, Localis



Margaret Eaton



James Morris

Introduction

*“Ah!” said Mr Podsnap. “Easy to say some-where; not so easy to say where! But I see what you are driving at. I knew it from the first. Centralisation. No. Never with my consent. Not English.”*¹

Today it is a given that England² is among the most centralised – if not *the* most centralised – of advanced industrial countries. Yet it wasn’t always like this. For the Victorians, not just Mr Podsnap, local self-government was a defining feature of national identity, a healthy contrast to the Gallic pattern of centralised despotism tempered by occasional revolutions.³ And in much more recent times, we could delight in the (perhaps mythical) pre-1968 French Education Minister, who could look at his watch and know what passage of Racine was being studied by thousands of schoolchildren across the country. Very funny, the French. We don’t do things like that here.

In the last three decades, of course, we have – at a time when France and many of our other neighbours and peers have moved in the opposite direction. Admittedly, recent years have seen something of a reappraisal of centralism, with a wide-ranging debate on the role and standing of local government. This was reflected in the Lyons Report; the White Paper *Strong and Prosperous Communities*; the Local Government and Public Involvement in Health Act 2007; the associated changes to Local Area Agreements and the performance management regime; and the Concordat signed by the Department of Communities and Local Government (CLG) and the Local Government Association (LGA) in December 2007. However, none of those involved in these developments would claim that they are other than work in progress. It is with this sense of unfinished business that the

House of Commons Communities and Local Government Select Committee has once more turned its attention to the issue of the central-local balance.⁴

This report puts the central-local balance in England in an international context, comparing the position of local government in England with that in a number of European and Commonwealth countries and teasing out the most important differences: in terms of constitutional protection, role in national political life, provision of services, financial autonomy and the degree to which local government is subject to performance management and reorganisation from the centre. From this we generate a series of recommendations that could improve the standing and autonomy of local government in England.

This report takes a peer group of Denmark, France, Germany and the Netherlands in Europe, and Australia, Canada and South Africa in the Commonwealth. Both European and Commonwealth conditions are relevant, because the UK uniquely occupies both international spaces. This group offers a range of perspectives. It includes both federal and unitary states, both small countries and trans-continental federations. There are two very different countries (Denmark and South Africa) that have just undertaken or are undertaking local government reform. In France, it includes a near neighbour of similar population size to England, which has since 1982 modified its historic centralism. The report will also make occasional reference to experience in other countries beyond the peer group.

Table 1 sets out the structures of sub-national government in each of the seven peer group countries, with England as a point of comparison.

¹ Charles Dickens, *Our Mutual Friend*, Penguin Classics edition, pp. 143-4

² Since devolution has created a fundamentally different dynamic within the other nations of the United Kingdom, this report focuses solely on the position of local government in England

³ Hunt (2004), pp. 263-86

⁴ Communities and Local Government Committee Press Notice, *New Inquiry and Call for Evidence. The Balance of Power: Central and Local Government*. See www.parliament.uk/parliamentary_committees/clg/clg_200708_pn51.cfm

Table 1: Local government structures

Country	Population (m.)	Sub-national tier	Local tier(s)
Denmark	5.5	5 regions	98 municipalities
France	60.9		22 <i>régions</i> 96 <i>départements</i> 35,000 <i>communes</i>
Germany	82.4	16 <i>Länder</i>	323 <i>Kreise</i> (counties) 117 <i>kreisfreie Städte</i> (unitary cities) 13,299 <i>Gemeinden</i> (municipalities)
Netherlands	16.6	12 provinces	443 municipalities
Australia	20.4	6 states 3 territories	286 urban councils 409 rural and regional councils
Canada	33.4	10 provinces 3 territories	2 metropolitan communities 143 upper/regional councils 3,647 local councils
South Africa	47.4	9 provinces	6 metropolitan councils 46 districts 321 local municipalities
England	50.4	Greater London Authority 8 regions (administrative)	34 county councils 238 district councils 36 metropolitan councils (unitary) 47 unitary councils 33 London boroughs

The two smallest countries within the group, Denmark and the Netherlands, have the simplest structures: they are unitary states comprising below national level a (fairly light) upper tier and a municipal tier. France has three local tiers, since it considers its *régions* to be part of local government, but again the structure is uniform (apart from matters of intercommunal co-operation, to be discussed below). Germany is a little more complicated; it has unitary government (*kreisfreie Städte*) below the Land level in its largest towns and cities. In addition, three cities – Berlin, Bremen and Hamburg – are *Länder* in their own right. Elsewhere, it has two-tier government, with the counties performing functions that are too big or wide-ranging for smaller municipalities.

South Africa has a similar breakdown between unitary government (in the metropolitan areas, covering the country's largest cities) and two-tier elsewhere. In Australia, local government structures can vary between different states, but are generally single tier though with radically different scales of population – by one recent account ranging from 57 in one authority (Ugar Island Council, Queensland) to 971,575 in another (Brisbane City Council).⁵ In Canada too, provinces vary in their structures. Ten of the thirteen provinces and territories have unitary structures. However, British Columbia has a two-tier system (regional districts and municipalities); Ontario mixes unitary and two-tier systems; while Quebec has local municipalities, Regional County Municipalities above them and, for the Montreal and Quebec City

⁵ Commonwealth Local Government Forum (2008)

areas, a supra-regional tier (Metropolitan Communities). A further complication of the Canadian position is that in many areas there are other locally elected bodies, such as school boards.

“ England has no elected intermediate or regional tier, with the peculiar exception of London: the rest of the country has significant regional administration, but no elected regional government ”

Another striking feature of the table is the very large number of small *communes* in France, which have so far proved resistant to efforts from the centre to encourage mergers. However, there has instead been a growth of centrally-encouraged cooperation between *communes*. The first initiatives go back to 1890, and in 1966 the government required the creation of co-operative *communautés urbaines* in four major cities (eight others followed suit afterwards). However, the most wide-ranging initiative was the 1999 *Loi Chevènement*, which relied on inducements rather than coercion; this encouraged the creation of three different types of *communauté* with tax powers of their own, also known as *établissements publics de coopération intercommunale* (EPCI). By 2004, *communautés* of this kind covered 82% of the population.⁶ The policy has clearly been a success in creating bodies of a greater scale; however, since there has been strong and successful opposition from the *communes* to the *communautés* being directly elected, their development makes the system more complex and opaque.

There are also intercommunal bodies in Germany, although their role is relatively modest, and there have been mergers of local authorities, albeit with large variations in approach between different *Länder*.

England stands out in relation to the peer group in three respects. Firstly, that its local government map is complex, certainly for a unitary country – the result of several decades of partial and sometimes whimsical reorganisations. Secondly, it has, along with South Africa, the biggest lower-tier authorities in terms of population: the average District Council has a population of 120,000, while (for example) the latest rationalisation in Denmark still leaves the average municipality serving a population of around 50,000. Thirdly, and at the other end of the scale, England has no elected intermediate or regional tier, with the peculiar exception of London: the rest of the country has significant regional administration, but no elected regional government.

Three members of our peer group are federations; however, all the others have tiers of sub-national government that are at least questionably “local”. (In the case of France, elected regional authorities were created in the 1980s). For the most part, we will focus our attention on the role and powers of local authorities in the strict sense; however, we will sometimes note the role of other sub-national authorities since it is impossible to understand the overall picture without reference to them, and in some countries they take on functions that in England are the province of upper-tier local authorities.

Structure of the report

The report compares the position of English local government with that of its counterparts in the peer group from five different perspectives.

In the first section, we will set out the constitutional protections and stability of local government in all seven countries. How clearly legally enshrined, for example, is the principle of subsidiarity? What status or protection in a written constitution does local government have in each country?

⁶ Wollmann (2008), p. 407

Secondly, we examine a particular form of protection for local government: its role on the national stage. To what degree do personnel overlap between national, regional (if applicable) and local politics? Is local government in some way represented in a second chamber? Does this have implications for a reformed Upper House in the UK? Are there other mechanisms for local government to influence legislation that affects it?

The third chapter, on the functions of local government, is relatively brief. Many of the same activities are carried out outside central government, although the peer group varies significantly in terms of the division of functions between sub-national and purely local government.

However, there is much greater divergence on financial issues, the subject of the fourth section. This addresses degrees of self-financing, the diversity and buoyancy of local revenue sources, and the balance between specific and general grants. Financial and constitutional issues combine on the issue of how local government can be protected from the imposition of unfunded burdens by central or sub-national government.

There is also great variety in the degree of central (or sometimes sub-national) supervision to which local authorities are subject in carrying out their role. This degree of intervention – including both performance management and the scope for reorganisation – is assessed in the fifth section.

The usual caveat about comparative research applies: each country's structures are a product of its history and institutional development, and so there is a need for caution in proposing that particular approaches can be adopted in England. In any case, there is no one feature that explains the relatively weak position of English local government: many of the pressures faced are strikingly similar across our peer group. It is in the cumulative effect of policymakers' responses to these pressures in this country over time that the problem lies. Equally, the application of specific lessons from other countries can have the mutually reinforcing effect of enhancing the independence and effectiveness of English local government. The recommendations found in each chapter, and summarised in the concluding section, are designed to have that effect.

1

Constitutional protection for local government

One potentially significant element in the weakening of English local government at the hands of the centre has been its lack of constitutional definition or protection. In the words of one commentator: “the capacity for central government [in England] to alter the ‘rules of the game’ is unrivalled.”⁷ In this section we examine the safeguards that are available to local government within our peer group.

Federal systems: “creatures of the provinces”

Two of the three Commonwealth countries within our peer group have federal systems, and this is the main factor shaping local government’s status. In Australia there is no recognition of or reference to local government in the constitution, and an attempt to achieve this in 1988 was lost in a referendum. Local government’s detailed role is set out in the respective state constitutions; these provide few safeguards for local government in terms of financing or reorganisation. Australian local government’s complaints about “unilateral state government action without appropriate consultation” will sound familiar to British ears if applied to central government.⁸

There have been efforts to raise local government’s status, and 2006 saw a parliamentary resolution on local government. This was, however, a very general statement; it was significantly less detailed

than the UK Concordat. The Rudd government, elected in 2007, has committed itself to consult on constitutional recognition and the Australian Local Government Association is lobbying for this to be accomplished. November 2008 saw the first meeting of the Australian Council of Local Government (ACLG). This was attended by the Prime Minister, the Minister for Infrastructure, Transport, Regional Development and Local Government and mayors from across Australia. The ACLG has been presented as the forum for a new, deeper central-local relationship.

Canadian federalism is significantly different from that of Australia in many respects, with the provinces enjoying a stronger position relative to the federal government than do the Australian states, where the centre is in a powerful position. However, when it comes to local government, the position in the two countries is much the same. The Canadian constitution mentions local government only to make clear that it is a responsibility of the provinces (Section 92 (8) of the Constitution Act 1867). Local governments are legally guaranteed at the provincial level, and the provinces have an untrammelled ability to reorganise local government. The result is a significant diversity of practice across the country – more than in the other federal states in our peer group – embracing not only a variety of tiers of local government, but also a

⁷ Bloomfield (2006), p. 12. For a wider commentary on the significance of the issue, see, for example, King (2007)

⁸ Australian Local Government Association (n.d.), p. 2

range of special-purpose authorities such as police commissions and school boards. The range of functions carried out by local authorities also varies significantly by province, and can reflect local and historical idiosyncrasies; for example, the rapid early growth of the city of Vancouver led to its being granted unusually wide powers under the 1886 Vancouver Charter.⁹

As in Australia, Canadian municipalities have tried to secure constitutional recognition without success. Local government made no progress in the debates around the patriation of Canada's Constitution and the resulting Constitution Act of 1982. Significant offloading of financial burdens to local government amid the financial pressures of the early nineties revived the debate, but as before the provinces were resolutely hostile to constitutional change. The last decade or so has, however, seen changes to legislation and practice within many provinces, strengthening local authorities' general competence powers and codifying the relationships between provincial and local tiers. These remain, however, legal rather than constitutional provisions.¹⁰

Germany: a different sort of federalism
At first sight, Germany – the only member of our European peer group with a federal structure – has many of the same features. The constitution (the Basic Law) has much more to say about the role of the *Länder*, which enjoy significant constitutional protection, than it does about local government. From a legal or constitutional point of view, local authorities are seen as part of the *Länder*, and much of their role is determined by *Land* law.

Nonetheless, the Basic Law recognises and offers protections for local government in a way that is distinct from the Canadian or Australian models. Article 28 (1) guarantees the existence of elected councils for counties and municipalities (though not

ruling out changes in their boundaries). Article 28 (2) guarantees municipalities “the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws.” It also guarantees their “self-government” within their areas of competence, and critically applies this principle 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 rate at which these sources shall be taxed.” In Article 28 (3), the Federation stands as guarantor that *Land* constitutions will respect these rights.¹¹ This is generally interpreted as giving local government right to appeal to the Constitutional Court against *Land* legislation which it believes is contrary to its rights of self-government. Nor is this merely theoretical; recent efforts to reform the county structure within the eastern *Land* of Mecklenburg-Vorpommern were declared a violation of the right of self-government by the local Constitutional Court.¹²

Article 106 provides more detail on the financial rights of the municipalities. In practice, the picture regarding financial autonomy of local government is less rosy than this implies; nonetheless, these are significant safeguards.

France: a different sort of unitary state
If Germany provides an example of a federal constitution offering some protection to local government, France gives a countervailing example of a unitary state.

Successive French constitutions and laws have incorporated support for local self-government, notably at the level of the *commune*; a principle of general competence was established by legislation as early as 1884. In practice this was often tempered by the administrative weakness of the localities by comparison with the central state. However, the significant

9 Leunig, Swaffield and Hartwich (2008), p. 14

10 Commonwealth Local Government Forum (2008); Australian Government (2003)

11 Germany: Basic Law, Article 28

12 Wollmann (2002), p. 4; Wollmann (2008), p. 36 n. 21

changes of recent decades have strengthened local capacities. Constitutional revisions undertaken following the “second wave” (*Acte II*) of decentralisation in 2003 have caught up with and entrenched this reality. The amended constitution now offers some of the most significant safeguards within our peer group.

Article 1 now states that “it [the Republic] shall be organised on a decentralised basis.” Article 72 defines the various “territorial units” (*régions, départements, communes*, etc.) and incorporates a form of the subsidiarity principle:

Territorial units may take decisions in all matters that are within powers that can best be exercised at their level.

The Article also allows for some experimental derogation from national laws and regulations, and states that “no territorial unit may exercise authority over another.”

Financial issues are also covered, notably in Article 72-2. This offers the possibility (though no guarantee) of access to a variety of sources of tax income and the ability to vary the rates of these taxes. The same article states that “the tax revenue and other own resources of territorial units shall, for each category of territorial unit, represent a decisive share of their resources”. It also makes clear that, when powers are transferred or new responsibilities given to “territorial units”, then suitable funding should be transferred or made available.¹³ As with Germany, the practical reality does not fully match this aspiration, but at least some sort of benchmark is provided.

Other European examples

The other two unitary states in our European peer group, Denmark and the Netherlands, go into less detail about local government in their constitutions. The

Danish constitution makes the bare-bones statement that:

*The right of municipalities to manage their own affairs independently, under State supervision, shall be laid down by statute.*¹⁴

Clearly the proviso “under state supervision” is somewhat ambiguous, though in practice Danish government is highly decentralised. A change in the status of local government can be accomplished by a simple majority vote of the single chamber Parliament; however, a referendum is required if a third of the members of Parliament request it¹⁵ (as is the case with any other legislation). As will be seen, it has proved possible to carry through large-scale changes in local government within a fairly brief period. In Denmark, decentralisation is rooted as much in ways of working and administrative capacity as it is in the constitution.

Chapter 7 of the Dutch constitution (Articles 123-136) is devoted to “Provinces, Municipalities and Other Public Bodies” but offers less in the way of detailed safeguards than do the French or German documents. It makes clear that authorities’ existence, their boundaries, finances and organisation are all matters for Acts of Parliament, without specifying any constraints on the content of those Acts. However, it includes both a power of general competence and a role in implementing national legislation at local level; as will be seen, these provide a useful basis for establishing local government’s role and relationship with the centre.

Perhaps the most striking reference to local government within a constitutional document comes from outside our peer group, in the Swedish Instrument of Government. Its first article locates the origin of public power in the people, “realised through a representative and parliamentary polity and through local self-government”.¹⁶

13 France: Constitution, Articles 72 and 72-2

14 Denmark: Constitution, Article 82

15 Hughes, Clarke, Allen and Hall (1998), p. 5.

16 Sweden: Instrument of Government, Article 1

South Africa: support and representation

South Africa represents a very different case, one driven by a desire to strengthen local government while recognising that historic conditions have limited its capacity and that this needs to be nurtured and enhanced. The 1996 constitution states that:

*The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.*¹⁷

The theme of local autonomy, but one encouraged and supported by higher tiers of government, runs through the document. The specific powers of local government are set out in schedules to the constitution, though these are subject to national and provincial governments having “the legislative and executive authority to see to the effective performance by municipalities of their functions.”¹⁸ Lest this be too centralising a measure, national and provincial governments are forbidden to “compromise or impede a municipality’s ability or right to exercise its powers or perform its functions.” There is a qualified subsidiarity clause, stating that national or provincial governments “must” devolve administration of their more local functions to municipalities, if “that matter would be most effectively administered locally” and if the municipality has the capacity to undertake it.¹⁹ The constitution recognises sharing of services between the different tiers, and an underlying philosophy of “co-operative government.”²⁰

The constitution also offers local government safeguards in terms of finance and representation. The taxes controlled by local government are relatively modest: property and certain other taxes, the latter not to include income, sales or value-added taxes. However, local government is to have “an equitable share” of nationally-raised finance,

taking into account a variety of factors, including its obligations under national legislation.²¹ This is given some teeth by the need for two of the nine members of the Financial and Fiscal Commission (which makes recommendations to a variety of bodies on financial issues, including regarding the “equitable division” of revenues) to be appointed after consultation with organised local government.²² Other rights of representation include a role for organised local government in the upper house (the National Council of the Provinces) and an admittedly fairly general right to consultation and representation on national and provincial legislation “that affects the status, institutions, powers or functions of local government.”²³

“ South Africa’s constitution is explicit in its commitment to local autonomy in terms of the powers and functions assigned to local government ”

Xolile George, Chief Executive, South African Local Government Association

Conclusion and recommendations

Our survey of the peer group suggests a very varied picture as to the significance of constitutional guarantees for local government. In several cases, constitutional safeguards are minimal or non-existent; it is also clear that federal systems can, in giving significant power to the higher-level but sub-national tier, be antipathetic to the interests of local government.

Only in South Africa does the constitution give any guidance as to local government’s powers, though in federal systems there is usually some sort of demarcation between the powers of the centre and those of the states or provinces. A study of wider European practice indicates that our peer group is representative: “In no European countries are local authority functions defined by the constitution, for they are a matter for the law.

17 South Africa: Constitution, Clause 1, Section 154, Chapter 7, Local Government

18 South Africa: Constitution, Schedules 4 (B) and 5 (B); Section 155 (7)

19 South Africa: Constitution, Section 151 (4); Section 156 (4)

20 South Africa: Constitution, Schedules 4 and 5; also Articles 40 and 41

21 South Africa: Constitution, Articles 214, 227 and 229

22 South Africa: Constitution, Articles 220-222

23 South Africa: Constitution, Articles 163, 154 (2)

Constitutions contain at most a general form of words characterising the nature of local functions, by reference to the nature of local self-government or to the management of local authority affairs.”²⁴

Nonetheless, in a number of cases constitutional statements have given some support to local government’s position. This is true in France, though, as will be clear from other sections, the drive to decentralisation there had other, more political causes; it is also the case in Germany, its federal nature notwithstanding. In both cases, the constitution both prescribes a basic structure and offers some guidance as to the nature of local government’s financial base. The French constitution also includes something close to a subsidiarity principle and an indication that increased responsibilities must be matched by enhanced financial capacity. Among our Commonwealth peer group, South Africa’s constitution offers both general indications of support for local autonomy and specific provisions on functions, finance and representation.

How might these lessons be applied to England, working within an “unwritten” United Kingdom constitution? Delivering his first major address as LGA Chairman to Localis in 2007, Sir Simon Milton argued that “councils will only be free when we can guarantee the rights of local councils, and the democratic mandate of councillors, in a constitutional convention.” This should be agreed both by the full Cabinet and by Parliament.²⁵ At the end of his final report, Sir Michael Lyons touched on similar proposals.²⁶

Much of the content of such a resolution could be drawn from the December 2007 Concordat and from the European Charter of Local Self-Government. This could be done with some adaptation rather than necessarily being a simple reproduction of clauses in the original documents.

The Charter includes important statements that could be adopted on: the

principle of self-government (Article 2); the need for local authorities to have “a substantial share of public affairs” in their area (Article 3); a statement of the subsidiarity principle (Article 4); and protection of local authority boundaries (Article 6). The statement (Article 8) on administrative supervision of local authorities’ activities – a key issue in English local government – is helpful but ambiguous.

In some respects, the Concordat is more specific and thus more helpful. It includes the recognition of local government’s independent electoral mandate (Clause 3); a form of the subsidiarity principle (Clause 4); a reinforcement of the well-being power and the expectation that local authorities will conduct “a growing share of the business of government” (Clause 6); a commitment by government to reduce the burden of inspection and ring-fenced grants (Clause 9); and consultation through a renewed central-local partnership (Clause 17).

The British government is, of course, already a signatory to both documents – in the Charter’s case, since 1997. The Charter has certainly had little discernible impact on government policy. In the aftermath of the signing of the Concordat, the Communities Secretary, Hazel Blears remarked regarding local authority finance,

*there probably is ... distance between us if I’m being fair. Sir Simon and the LGA will always push for more financial independence, and I have to be very clear that as national government we have a responsibility to the public to ensure that taxation remains at an acceptable and realistic level. That’s both national taxes and local taxes, and we’re never going to come away from that.*²⁷

This was admirably frank, but scarcely in accordance with the spirit of the Charter’s provisions (Article 9) on finance. Much earlier, Jeremy Smith analysed the question

²⁴ Council of Europe (2007), p. 18

²⁵ Milton (2007), p. 11

²⁶ Lyons (2007), pp. 358-9

²⁷ Drillsma-Milgrom (2008)

of UK compliance with the Charter and concluded that: “Central government is not testing its new policy proposals against its international commitments through the Charter. It needs to do so.”²⁸ The Concordat is a much more recent document, but it too needs reinforcement or, more precisely, some form of entrenchment.

This is what a parliamentary resolution could achieve. As Smith put it in his review of Charter (non)-compliance:

*it might be useful, as well as necessary in the terms of the Charter, for there to be an Act which sets out the principles of local self-government in a clear way, to establish the place role of local democracy. ... The idea of recognising the principle in legislation is in effect to give a quasi-constitutional role to local democracy. Many would like to see this role entrenched in legislation.*²⁹

To be meaningful, any such resolution would have to address the issue of finance. This will be addressed in more detail in a later section, but the provisions within the French and German constitutions on self-financing, and on the diversity and buoyancy of funding sources are useful models. The Charter (Article 9) covers

some of the key issues, notably adequacy of financing and the ability to vary rates on at least some taxes. Most critically, Article 9 (4) 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.

This bears little resemblance to any recent sightings of the English local government finance system. References to finance and the charter appear to have been a point of division between the LGA and the government at the time of the signing of the Concordat; the final text and an associated footnote refer to the Charter, but only to the more anodyne text of the Preamble. A Parliamentary resolution should go further than this, incorporating the substance of Article 9 (4).

Following enactment of the resolution, we believe that it should be part of the brief of the Communities and Local Government Select Committee to monitor compliance with its provisions.

²⁸ Smith (2002)

²⁹ Smith (2002), p.90

2

The role of local government in national politics

Written texts represent only part of a country's constitutional practice. The degree to which local government is a significant actor in national politics, and the influence it has over decisions that affect it, is at least as important. One way of doing this is through a role in a second chamber, many of which have a role in representing the "territorial dimension" within the state. However, there are other possibilities, such as formal mechanisms for representation and consultation. For English local government, the central-local partnership has been the main vehicle of this kind, and the Concordat emphasised the need for its renewal. Our peer group offers a variety of means by which local government's role in policy-making can be given teeth.

The role of Upper Houses

In his first major speech as Chairman of the LGA, Sir Simon Milton argued for "a place for local government in a reformed Upper House."³⁰ It provides an obvious route for local government's voice to be heard in key national debates. To what extent does our peer group offer examples of how this might work in practice?

Three members of the peer group can effectively be ruled out. Denmark is unicameral. Canada's Senate is an appointed body, albeit on the basis of equal representation of the provinces. The Australian Senate also offers equal representation for each State or Territory, though its members are directly

elected (through proportional representation, in contrast to the Alternative Vote system for the lower house). Both Senates are examples of a wider issue. On paper, many Upper Houses are "territorial". All six of Europe's federal states are bicameral, as are states that are constitutionally regionalised or at least highly decentralised. In practice, however, this rarely brings a connection to politics in the regions or localities. "Many supposedly territorial upper houses act as just another collection of national politicians, insufficiently connected to devolved institutions to fulfil their intended role." Detailed analysis has shown that the Australian Senate has played little if any role in defending the interests of sub-national (state) government.³¹

However, the remaining members of the peer group include one undoubted "house of local government"³², the French Senate (*Sénat*). The constitution makes clear its role:

*The representation of the territorial units of the Republic shall be ensured in the Senate.*³³

This is accomplished by its method of selection: its members are elected from each *département* by an electoral college of local notables. This indirect electoral method, and the composition that results from it, is open to criticism. Its electorate is dominated by the lowest tier of local government, the *communes* (who make up

³⁰ Milton (2007), p. 7

³¹ Russell (2000), pp. 284, 211-12

³² The term is that of Russell (2000), p. 61

³³ France: Constitution, Article 24

95% of electors) and in particular by the very smallest *communes*.³⁴

Unsurprisingly, most (84%) of the *Sénat*'s members hold office in local government, and the great majority of these (61% of the total) are municipal (i.e. *commune*) councillors. More than a third of the *Sénat*'s total membership (121 members, or 36% of the total) are mayors.³⁵ These include high-profile figures; for example, Bertrand Delanöe, mayor of Paris since 2001, has served as Secretary to the *Sénat*'s Committee on Foreign Affairs and Defence. However, one side effect of members having additional responsibilities is that attendance is patchy.

It is worth contrasting this local government presence with the composition of the House of Lords, which has about ten members with current or recent local government experience out of a total membership of 735. However, this as much reflects the French system of dual mandates as it does the peculiar nature of the *Sénat*; many members of the National Assembly also serve as councillors. It is the power of local *notables* – in which *Sénat* representation is just a part – that gave local interests some counterweight to the centre, even before the Mitterrand reforms.³⁶

The big drive for decentralisation, which has been of particular benefit to *départements* and *régions*, did not come from the *Sénat*, but from successive administrations, above all that of François Mitterrand after 1981. Nonetheless, the *Sénat* has taken “a particular interest in debates over the structure and powers of local government”, albeit very much from the viewpoint of the *communes*. Its particular set of priorities is clear from the evolution of the new structures for *communes* under the 1999 *Loi Chevènement*. This legislation encouraged the creation of new *communautés*, groups of *communes* coming together to undertake joint action and thus overcome the constraints of many *communes*' small size.

The *Sénat* blocked any moves towards direct election to the new *communautés*, fearing that this would undermine the role of the *communes* themselves. This process was repeated in further debates on local government reform a few years later.³⁷

“ Unsurprisingly, most of the *Sénat*'s members hold office in local government, and the great majority of these are municipal councillors. More than a third of the *Sénat*'s total membership are mayors ”

In the eyes of many critics, the *Sénat* has acted as the instrument of the small *communes* and thereby blocked desirable reforms. Yet this is fundamentally an argument about its composition: if, for example, the electoral college and thus the composition of the *Sénat* itself were weighted towards authorities with larger populations, then the result would surely have been different. Whatever the merits of *commune* reform, the *Sénat* has undoubtedly reflected the interests of its local government constituency.

The German *Bundesrat*, unlike the Canadian or Australian Senates, is a truly territorial chamber. However, its role is effectively to represent the executives of the *Länder*: local government is not involved or represented. In addition, the *Bundesrat* performs very differently as a second chamber from anything that we are used to in the United Kingdom. Given the time constraints on the senior *Land* politicians who serve there, much of its work (including that of committees) is done by officials. Formal debate is limited, and votes are cast on a bloc basis by each *Land*.³⁸ Nonetheless, the role of the *Länder* in the *Bundesrat*, coupled with their administrative importance, helps secure the position of a tier of sub-national government against the centre, modifying the effect of

34 Russell (2000), pp. 63-4, 92: Speech by Jean-Claude Peyronnet, member of the French *Sénat*, in Council of Europe (2008), p. 103. The statistics given by Peyronnet show that little has changed since Russell's book was written

35 Peyronnet speech, Council of Europe (2008), p. 103. These calculations exclude the 12 members of the *Sénat* who represent French nationals abroad

36 Ardagh (1982), pp. 187-205 gives a very good description of the pre-1982 system

37 Wollmann (2008), pp. 405-6, 409-14

38 Russell (2000), p. 94

the Federal government's monopoly of legislation.

South Africa has an explicitly territorial upper house: the National Council of the Provinces (NCOP). Each province appoints ten members on the basis of party strength within the provincial legislature; four of these can be members of the legislature. However, in addition the South African Local Government Association (SALGA) has ten representatives, who can speak in debates though they cannot vote. The NCOP is seen as an expression of "co-operative government", that is, between central, provincial and local government.

Parliamentary procedure differentiates between bills that affect provincial government (relating to the areas of shared competence between the centre and the provinces defined in the constitution) and those that do not. For the former ("Section 76 bills"), provincial delegations have to vote as a bloc, requiring agreement between the different party groups represented in each delegation; the bill is passed if five out of nine delegations do so. If there is disagreement between the two houses, the bill is referred to a Mediation Committee.

There is also a separate procedure for bills with constitutional implications ("Section 74 bills"); these include alteration of "provincial boundaries, powers, functions or institutions".³⁹ These require a two-thirds majority in the NCOP, again with delegations voting as a bloc.

Thus, while the NCOP chiefly represents sub-national rather than local interests, it gives some voice to organised local government, while providing important safeguards against aggrandisement by the centre.

In the Netherlands, the Senate is indirectly elected by the members of the Provincial Assemblies. Thus the Senators are chosen by the provinces (though they do not represent the provinces as such) but

not the municipalities, though Senators "pay scrupulous attention to the expressed wishes of the regions, provinces and municipalities."⁴⁰ Given who their electorate is, this is unsurprising. The Senate has on occasion proved capable of blocking significant changes, notably throwing out proposals for directly elected mayors in 2005.

Other platforms for local government France is clearly unique within our peer group in the role that local government – as opposed to sub-national government – has in its upper house. There are, however, other routes for local government to influence national policy and legislation.

The role of French local government in the *Sénat* is a reflection of a wider feature of French political life that is distinctive if not unique: the intermeshing, through the role of local *notables*, of national and local politics. The key feature here is the dual mandate – the *cumul des mandats*, which in recent years has been modified but not eliminated – under which national politicians also serve in local roles, often as mayors. (In keeping reform of the *cumul des mandats* more limited than the government had originally envisaged, the *Sénat* once again protected the traditional pattern of behavior in local government).⁴¹

Critically, the local role is not – as is often the case in England – simply a step on the career ladder towards national eminence; it can be combined with national responsibilities and even be undertaken after the peak of a national career. A striking example of this was the late Raymond Barre, who had been both Prime Minister and a serious candidate for President. It was not thought in the least incongruous that, after his unsuccessful presidential bid, he served as the Mayor of Lyon. Other examples are furnished by the city of Lille, whose long-serving mayor,

39 South Africa: Constitution, Article 74 (3) (b) (ii)

40 Speech by Geert Jan Hamilton, Secretary General of the Dutch Senate, in Council of Europe (2008), pp. 59-60

41 Knapp and Wright (2006), p. 369

Pierre Mauroy, served as Prime Minister, while his successor in Lille in 2001 was the high-profile Martine Aubry. As Minister of Social Affairs (1997-2001), she pushed through the controversial 35-hour work week; she has subsequently (November 2008) emerged again on the national stage as leader of the Socialist Party.

This local-national relationship is not found elsewhere in our peer group. In Germany, for example, it is the *Länder* that have acted as a power base for national leaders, including many of the post-war Chancellors.

In federal countries, there are often forums at which national and sub-national leaders meet: COAG (the Council of Australian Governments) in Australia, federal-provincial conferences in Canada. Organised local government may have a seat at the table, as is the case in Australia.

Another route is for there to be established procedures for local government to be consulted on matters affecting it. This is fairly standard procedure, and can be quite modest in its impact. In England, it was to be found as part of the Central-Local Partnership established in 1997; in Germany, the standing orders of the Federal Government require that the three local government associations be consulted on any law that affects them. There are similar provisions in other countries within the peer group. This can be useful, but consultation is a long way short of decision-making power.

Finally, there is some sort of codified agreement governing the relationship between the centre and local authorities. This was, of course, the basis for the CLG-LGA Concordat of December 2007. A striking precedent for this work can be found in the Netherlands, where in November 2004, representatives of the various tiers of government signed a “Code of Inter-administrative relations”. This too followed a period in which local government feared that national policy had been

heading in a centralist direction. The Code was an attempt to clarify relations, cut back over-regulation and supervision of local authorities and to reduce reliance on specific grants; the latter would, in any case, be the only occasion for the State to play a directing role towards local authorities.

The Code also included a subsidiarity clause: “Only when the decentralised authorities cannot promote an issue efficiently and effectively can the issue be dealt with at State level.” It also emphasised that both the IPO (Association of Provincial Authorities) and VNG (Association of Dutch Municipalities) would be involved in considering draft legislation on matters affecting them. In addition, the chairmen of both bodies will have a seat on the Public Authorities Consultative Committee, which is chaired by the Prime Minister and is the forum for discussing both the Code and central-local relations in general.

Much of this sounds familiar: the Concordat called, for example, for a revival of the Central-Local Partnership as a vehicle for discussing the Concordat’s own implementation and the future development of relations. Nonetheless, in certain respects the Dutch Code appears to go further. For one thing, it envisages that the IPO and VNG should be consulted when a new Cabinet is being formed and drawing up its programme (which, because of Dutch coalition politics, is a more formal process, setting the scene for a Parliament, than is found within the British system). More generally, local government’s role in helping to shape legislation has been strengthened. In addition, the Council of State – the senior advisory body to governments – is to undertake periodic reviews of “inter-administrative relations”. Finally, elements of the Code’s programme are more specific than that of the Concordat, aiming at action to reduce the regulatory burden at all levels of government within a year.⁴²

⁴² Ministry of the Interior and Kingdom Relations (2005); see also Bloomfield (2006), p. 18; Council of Europe (2007), p. 102

Conclusion and recommendations

Clearly local government representation in a reformed Upper House would be a powerful way of strengthening its influence and making it more of a participant in national policy-making and less of an object of central government decisions.

There is a clear will in the Commons for the majority of members of a reformed Upper House to be elected directly. However, this does not preclude a portion coming from local government; Sir Simon Milton argued that it should be ten per cent of the total membership.

“ Local government in the UK has long been undermined by the centripetal forces that are a feature of the British polity and this constitutional damage has happened in part because of the lack of a strong voice for local government in the House of Lords ”

Lord Hanningfield, Leader, Essex County Council

A major objection to this has been that local government leaders, especially those of large authorities, are too busy to make a serious commitment as legislators as well. The attendance problems of the French *Sénat* and the style of operation of the German *Bundesrat* underline the point. There are examples, such as Essex's Lord Hanningfield, of a leader of a major authority also taking a significant role in the Lords, and recent LGA chairmen have combined that role with the leadership of large authorities. However, the question as to whether this could be done on a broad front remains.

However, it may be possible to use a system of substitutes, as do provincial leaders in South Africa; alternatively, local authorities could choose additional, indirectly elected members for whatever large constituencies are used for the new Upper House. This would require tackling the issue of the relative weight given to different authorities in two-tier areas,

just as has been necessary in regional assemblies.

Such a system is used in the Spanish *Senado*. In this case, the indirectly elected members represent the “autonomous communities”, in effect the regional or nationalities tier, but a similar principle could be applied for local government. Some of those elected are members of the autonomous communities' assemblies, some are not. However, that model does not yield especially good links with the assemblies; the indirectly elected members act very similarly to their directly elected colleagues, first and foremost as national politicians. This underlines that, if the model were to be applied to England, there would need to be some sort of reporting relationship back to the local authorities, perhaps to a Leaders' Forum for the area.⁴³

We believe that local government representation along these lines in a reformed Upper House is desirable. However, given past history and current uncertainties, it may be unwise to put all the localist eggs in the basket of Lords reform; it is worth remembering that the 1911 Parliament Act was intended as a temporary expedient pending the creation of “a second chamber constituted on a popular instead of hereditary basis.” There are other ways to entrench local government's role in decision-making.

A second suggestion made by Sir Simon Milton was to have a committee that could review legislation that would put extra burdens on local authorities, on the model of the procedure for Deregulation measures. (In the case of deregulation, this involves committees of both houses). Arguably, this could be applied not only to legislation that puts burdens on local authorities, but also to any legislation that makes a major change to the status of local government. Local government's role in this process could be strengthened further by giving local government leaders the right to speak in this committee; this is roughly analogous to the right that leaders of the autonomous

⁴³ This point – with reference to Second Chambers generally – is made in Russell (2000), pp. 286-8

communities have to speak in the special committee on regional affairs in the Spanish *Senado*, or – more distantly – to the role of SALGA in the South African Upper House.⁴⁴

Thirdly, there is the question of a regular, high-level dialogue between central and local government. This is the intended role of the Central-Local Partnership. When compared with the Dutch Code on Inter-administrative Relations, it lacks the external support of a body such as the Constitutional Council; however, the proposals in the previous chapter for a

parliamentary resolution and a monitoring role for the CLG Committee should close this gap.

Lastly, it is worth noting that – in spite of the “quasi-federal” nature of the post-devolution UK – arrangements for relations between the different national authorities are relatively informal, at the political level at least. There is no equivalent of COAG or the federal-provincial conferences. Were such procedures to emerge in the UK, it would be essential for local government to have a seat at the table.

44 Russell (2000), pp. 285-7

3

Functions

Self-evidently, the functions performed by local authorities are an important dimension in assessing their strength or otherwise. Table 2 seeks to represent the position in our peer group countries.

- We show not only the functions of local authorities, but also those of sub-national government: States, Provinces, *Länder*. This demonstrates more fully the distribution of powers within a country, and the environment within which local authorities operate
- In most cases, we differentiate solely between sub-national and local tiers. In practice, there are many variations at the local level: in Germany between county, municipal and unitary authorities; between local authorities of radically different scales in Commonwealth countries; not to mention the smorgasbord of local authority types to be found in England. We have opted to keep the diagram relatively simple and show the widest range of functions for a local authority in a given country
- France is unusual in that its regional tier is counted as part of the local authority grouping (*collectivités locales*) rather than as a form of sub-national government. In this case we have broken down local authority roles between the three tiers. England, by contrast, has no elected regional or sub-national tier, but we have sought to indicate the roles taken on by regional administration in recent years
- Functions often overlap rather than dividing neatly between different levels of government. The table tries to capture some of this complexity. Two ticks indicate a strong role (though not always a sole or dominating one) for a tier of government in a particular area; a single tick shows a more modest role. This is in some cases a fine judgement

For all local authorities, there is a core of activities around the “property” and “amenity” sections; in effect, “place-shaping” functions. There is much greater divergence with respect to large-scale public services. Only in Denmark and Germany do local authorities play a significant role in health, and education is often driven more by sub-national government, though often with a role for local authorities in areas such as school buildings and transport. Unitary England and the Netherlands represent a partial exception to this, although in both cases the role of local authorities has tended to diminish in the direction of both greater central government involvement and school independence.

There is a much greater local authority role in social services within our European peer group, though this is more a matter for sub-national (or, in the case of South Africa, national) government in our Commonwealth countries. In a number of cases, there has also been a historic role for local authorities in the Poor Law/social assistance end of the benefit spectrum, and in several there is an increasing role in

Table 2: Breakdown of functions

	Denmark		France		Germany		Netherlands		Australia		Canada		South Africa		England		
	Regions	Municipalities	Régions	Départements	Communes	Länder	Local	Provinces	Municipalities	States	Local	Provinces	Local	Provinces	Local	Regional	Local
Property																	
Roads (local)	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Public transport	✓/✓		✓/✓	✓/✓		✓	✓/✓	✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓		✓/✓
Utilities	✓/✓			✓/✓	✓/✓		✓/✓	✓	✓/✓	✓/✓	✓/✓	✓	✓/✓	✓/✓	✓/✓		✓/✓
Waste	✓/✓			✓/✓	✓/✓	✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Local planning	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Amenity																	
Parks & open spaces	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Sport & leisure	✓/✓		✓/✓	✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Cultural facilities	✓/✓		✓/✓	✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Social																	
Health: hospitals	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Health: other	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Education: primary	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Education: secondary	✓/✓		✓/✓	✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Education: FE& HE	✓/✓		✓/✓	✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Other children's services	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Social services	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Social housing	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Welfare & employment	✓/✓		✓/✓	✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Public order																	
Police				✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Fire & rescue				✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Emergency planning	✓/✓			✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Other																	
Strategic planning	✓	✓/✓		✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Strategic infrastructure	✓/✓		✓/✓	✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Economic development	✓/✓		✓/✓	✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓
Environmental protection	✓/✓		✓/✓	✓/✓	✓/✓		✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓	✓/✓		✓/✓

Sources: Commonwealth Local Government Forum (2008); Parrado (2005); Wollmann (2008); VNG (2008); Ministry of the Interior and Health (Denmark) (2005). Note: "Strategic infrastructure" = larger roads, rail, airports.

getting unemployed people back into the labour market. There is a mixed picture in areas such as public order (in which, again, English local authorities have seen their role reduced somewhat), while economic development and environmental protection are areas of growing activity. There are also one or two surprises, such as the role of local authorities in Australia in operating regional airports, represented in our “strategic infrastructure” line.

“ After the latest reform in Denmark, citizens have a single point of entry to the public sector: the local authority ”

Peter Gorm Hansen, Chief Executive, Local Government Denmark

Danish municipalities have the widest range of activities, with a significant role in health, the administration of social benefits and joblessness and labour market policy. In the latter area, they currently work jointly with national government; however, from August 2009 they will take sole charge. They have responsibility only for primary and lower secondary schools; other schooling, along with further and higher education, is run centrally. Nonetheless, they are the delivery arm for most public services. The philosophy behind the recent local government reform was that citizens should have – with very rare exceptions – only one entry point to dealing with the public sector, and that it should be the municipality.

Thus several functions previously carried out by the counties have either been transferred to the municipalities or have moved to the centre. Municipalities’ share of public spending rose from 46% before the reform to an estimated 48% after it, that of the centre from 40% to 43%. The new regions perform a limited and co-ordinating role, focusing on strategic planning, regional bus companies, raw material plans, hospital care and health insurance.⁴⁵

German local authorities also have a wide range of functions, in spite of the strong role of the *Länder*. The latter have responsibility for education, culture and policing. They also have a strong role in higher-level, strategic planning, whether for land use, transport, or education provision.

Germany is hard to represent properly, since functions cascade down from the Federation, which has wide-ranging legislative competence, but little administrative presence via the *Länder* (or straight from the *Länder*) to local government. With the creation of larger local authorities in the 1970s, this process was extended, with some *Länder* transferring local administration of core functions (which could include “public health bodies, veterinary authorities, land surveying and registering boards, school authorities and police departments”⁴⁶) to counties and larger municipalities. However, the process was not uniform across *Länder*. In areas “such as health, transport and the environment, the division of powers and responsibilities is governed by each *Land’s* own specific legislation.”⁴⁷

Education provides an example of the overlap of roles. The *Länder* employ teachers, set curricula and provide supervision; the municipalities have responsibility for local organisation, school transport and buildings. In practice, they often do more than this, providing extra staff, ensuring out of hours activities and building links to social services. Similarly in health, most *Länder* have delegated their public health responsibilities to the *Kreise* or to larger municipalities. The *Länder* and the municipalities both take responsibility for hospitals, with *Land* funding for large-scale investment and municipalities providing the running of about a third of hospitals.

Other “mandatory” activities passed down to local authorities include road construction and maintenance, fire protection and waste disposal. Additionally, there

45 Ministry of the Interior and Health (Denmark) (2005)

46 Kuhlmann (2007), p. 5

47 Bloomfield (2006), p. 6

are “delegated” activities, in which local authorities act on behalf of the *Land*, and have very little discretion. These include a range of licensing and registration activities, building supervision and rent subsidies. Remaining activities – cultural and amenity functions (concert halls, libraries, sports facilities), as well as economic development – are areas of “voluntary self-government”.⁴⁸

German local government has a long tradition of the “local social state”, embracing both social services and social assistance. Many of the former have long been delivered by non-state organisations.⁴⁹ Increased demographic pressures strained local authority finances, resulting in the 1995 Care Insurance Act, which moved towards a more national and insurance-based model coupled with deregulation of the supply side of provision. Local government’s role has thus been reduced, though it is still significant in supervision and in providing a safety net for those whose insurance contributions are inadequate.

The social assistance role was separate from the nationally-oriented Bismarckian social insurance, but was intended to complement it. In this local government has operated under federal legislation, though providing its own funding. Here too, financial pressures (in this case resulting from higher unemployment) have resulted in a reduced role; in 2005 social assistance for the unemployed was largely transferred over to the longer-term federal unemployment benefit. Before this, local government had been drawn into an increasing role in the labour market.

Initial proposals for the 2005 reform would have given the Federal Labour Agency (one of the rare examples of a federal government administrative presence in the localities) sole responsibility for longer-term benefits and for efforts to get the long-term unemployed back to work. However, under pressure from the

Bundesrat, the federal government took a middle course, with the responsibility to be shared between the Agency and local authorities. In addition, the federal government allowed an “option model”, under which in some parts of the country local authorities took sole responsibility. The results of this experiment were to be assessed in 2010; however, at the end of 2007 the Constitutional Court found the working of the joint teams unconstitutional. The Grand Coalition government has struggled to find an alternative way forward, but it appears that there will be a federal organization that will take the lead, but with local authority representation, while the option model will be maintained until 2013. The latter is in any case viewed with scepticism by many in local government as another cost-shifting exercise from the centre.⁵⁰

For somewhat different reasons, presentation of the situation in France is also difficult, and the table is inevitably a simplification. In part, this is because the three tiers of French local authority all have general competence and none is subordinate to the other; the result is that there is a significant overlap of many areas of activity. However, there is at least a broad difference of emphasis. The *régions* are particularly active in large-scale infrastructure and transport activities (including regional rail and airports), strategic planning and economic development. The *départements* have undertaken an increasing role in social policy during the two major waves of decentralisation. In 1982-3, they took on a wide range of social services functions; in 1988 they took on partial responsibility for income support for the unemployed, along with measures to bring them back into employment. Full responsibility was transferred to them in 2003. They are also responsible for roads and public transport in rural areas. The *communes* are local place-shapers; they have taken on an ever-increasing role in local planning since the

48 Gunlicks (2003), pp. 94-102

49 Wollmann (2002), p. 5

50 See Wollmann (2008), pp. 36, 86-97; I am grateful to Ulrich Haarmann of the Association of German Cities for providing a more detailed and up to date account

1982-3 reforms, deliver local amenity services and have long played a role in utilities, albeit on a contracted out basis, and in smaller-scale, discretionary social services.

The *communes* present a second difficulty in describing the breakdown of functions. Their role varies significantly according to their size; the range of activities shown in the table is reflective of a larger *commune*. In addition, the intercommunal bodies brought into being under the 1999 *Loi Chevènement* have been granted a variety of functions. This is particularly true for the largest organisations, the *communautés urbaines*, which can take on a wide range of planning, public service, cultural and economic development functions.

That said, the overall picture of French local government is one of a fairly wide range of activities, albeit qualified in key public services – such as housing and education – by the strong role of the central state. Thus each of the three tiers has responsibilities (in practice, rather less clearly defined than the table implies) for a level of education: primary, lower secondary and upper secondary respectively. However, while this embraces matters such as school buildings, key areas of supervision, as well as employment of teaching staff, remain a central responsibility.

As a unitary state, the Netherlands has some similarities to England, especially since the Provinces have relatively light staffing and have a largely strategic role, acting as a co-ordinating body between central and municipal government. Another similarity is the reduction in the local authority role in housing and education. Low-cost housing organisations have become private-law foundations at (considerable) arms length from municipalities, while funding is via a national agency, the Central Housing Fund.⁵¹ In practice, the relationship between the municipality and housing organisations varies significantly between areas.⁵² In

education, there is now a much more direct relationship between the centre and the schools, in terms both of funding and supervision. The main role of municipalities is in areas such as school premises and transport.

Dutch municipalities have a strong role in delivering social welfare programmes, and a notable one in minimum income support and bringing people back into the labour market. Municipalities have to follow central guidelines in the allowances that are paid to the unemployed, but have discretion over the measures that they use to help people back into work. They are supported in this by a state grant, with an interesting set of incentives. On the first part of the grant, covering income support, municipalities can keep surpluses and have to cover deficits, giving them good reason to get claimants back to work. At the same time, they must return any unspent element of their grant for labour market integration to the centre. This clearly gives them an incentive to spend it, but the benefits to the council of getting claimants back to work should encourage effective spending.⁵³

Dutch municipalities are also strong players in utilities. In policing, mayors have a strong role, with the country divided into twenty-five police regions, each headed by the mayor of the main town or city, with other mayors sitting on a regional police board along with the public prosecutor.

In the three Commonwealth countries within our peer group, local government's role tends to be narrower than in the European countries.

In Australia, it is the states who deliver education (apart from tertiary education, which is a federal responsibility), most social services, fire and the more local aspects of policing. Health is shared between the federal and state governments, with a very modest public health role for local authorities. Utilities are largely a state

51 Council of Europe (2007), p. 105

52 Leunig, Swaffield and Hartwich 92008), p. 30

53 Council of Europe (2007), p. 106

responsibility, though some local governments take the lead on water. Local authorities have also taken on increasing responsibilities regarding regional airports. The core roles for local authorities are in “property-related” services – town planning, waste collection and disposal, and some road responsibilities – and “amenity” services: arts, museums and libraries, parks and open spaces.

There is, in fact, considerable variation in the range of services provided by local government – reflecting the diversity of the sector itself – and the trend in the past few decades has been for councils to take on a broader range of functions, with the amenity element of their budgets increasing and having an increasing role in social services.⁵⁴ Overall, however, the range of services provided is relatively limited by international standards.

In some respects, the position in Canada is similar, with the provinces undertaking a major role in service delivery, notably in education. Local government’s core services are again in the property and amenity field. However, their range of activities is wider than that of their Australian counterparts, with a greater role in policing and fire services, in health and social services (especially in Ontario) and in economic development.

Though not formally a federation like Australia or Canada, South Africa also has a strong intermediate tier in the form of the provinces. The constitution sets out the competences to be shared between the centre and the provinces, and those that are exclusively matters for the provinces, with the core functions of

local government also defined. The latter cover many of the familiar property, environmental and amenity functions: planning, local public transport, fire, utilities, environmental health and services and waste. Local economic development is also a significant activity. There is some role for local authorities in health, although this is very much shared with both other tiers. Education, however, is a matter for shared national and provincial competences (schools), or for national government alone (higher, vocational and adult education). The national government presence is also strong in social services.

Thus our peer group demonstrates significant differences in the range of functions carried out by local authorities. English local authorities do not have the most comprehensive functions within the group; they have no significant role in health or labour markets, for example, and as a consequence of the nationalisations of the 1940s and subsequent privatisations they have no role in utilities either. Nonetheless, their role in the delivery of public services is highly significant, not least because of the weakness of the appointed regional tier. The table is a reminder that “local government in Britain ... is still very big business.”⁵⁵

Nonetheless, what matters at least as much as the functions assigned to local authorities is how they are able to finance them; the terms under which they are able to carry them out; and the degree to which they experience supervision or intervention from higher tiers. It is to these issues that we now turn.

⁵⁴ See Pricewaterhouse Coopers (2006)

⁵⁵ Wilson and Game (2006), p. 119

4

Finance

Local government finance is a subject that can freeze a conversation – but can also defenestrate a Prime Minister. The constraints with which it has been surrounded in England have been the central feature of the centralisation drive of recent decades. This chapter assesses how peculiar the English system is (or is not). There are a number of criteria that can be applied to assess the financial robustness and independence of local government in our peer group countries – and, interestingly, they do not necessarily point in the same direction. They are:

- *Self-financing.* This is the degree to which local government finances itself by taxes that are fully under its control, i.e. for which it can set the rate. The “vertical fiscal imbalance” indicates the scale of divergence between local government’s role in service delivery and its funding capacity
- *Diversity and buoyancy of funding sources.* The position of English local government as a one club golfer, dependent solely on a property tax with no automatic link to economic growth, has long been recognised as a central problem for the sector
- *Central government control.* English local government has been subject to capping, whether of rates or of council tax, under governments of both parties. To what extent is this experience unique?
- *General versus specific grants.* All local governments receive some of their funding from central government: to

what extent is this earmarked for specific uses?

- *Exposure to new financial burdens.* This is linked to the constitutional issues discussed in earlier chapters. Is local government protected from having new tasks wished on it by a higher tier of government without the funding needed to carry out these tasks?

Not only can these indicators point in different directions, they can also be ambiguous in themselves. A high level of self-financing is clearly desirable, but it is important to check the other part of the equation: it may reflect limited functions and hence expenditure for local government. Assigned taxes can also bring an interesting ambiguity, in that local government does not control the rate but it may provide a buoyant source of income, such as a share of national income tax. What matters is the picture that emerges in the round.

Getting and spending

We start with the most (apparently) simple question: what do both local government and more broadly-defined sub-national government spend, and what do they raise in taxation?

Local government in our different peer group countries demonstrates a very varied spending profile. This reflects differences in functions, as described in the previous section. The picture is complicated by the presence of higher tiers of sub-national government, but if we take local govern-

Table 3: Local government taxation and spending

		Spending % of GDP	Share of total spending	Taxes % of GDP	Share of total taxes	Tax/spending	Self-financing
Australia	States	13.9	40.5	4.7	15.3	33.5	55.1
	Local government	2.1	6.1	0.9	2.9	42.5	86.8
Canada	Provinces	20.3	51.9	12.1	37.2	59.7	82.1
	Local government	7.2	18.3	2.9	8.9	40.5	57.8
	Local general government	4.2	10.6	2.3	6.9	54.2	83.3
Germany	<i>Länder</i>	12.8	27.3	8.2	21.2	64.3	82.4
	Local government	7.3	15.6	2.9	7.4	39.5	65.5
Denmark		33.3	64.5	16.5	33.7	49.6	59.3
France		10.9	20.4	4.8	11.0	43.9	71.7
Netherlands		16.0	35.5	1.5	4.1	9.6	31.9
United Kingdom		13.0	29.2	1.8	4.8	13.8	31.2
South Africa		n/a	n/a	n/a	n/a	16.4	64.2

Note: 'Self-financing' represents taxes and other own sources of income (such as fees) as a percentage of total spending; in effect, it represents all the expenditure that is not covered by grants from higher tiers of government.

For Canada, 'local general government' excludes School Boards. For South Africa, figures are for local government only, since Provinces are funded almost entirely by grants.

Source: OECD (2007, 2008), Australian Bureau of Statistics (2008), Statistics South Africa (2008), own calculations

Data is for 2005, except for Canada (2004), Australia and South Africa (2006-07) and Denmark (2006)

ment, narrowly defined, we can categorise the countries as follows:

- *High spending, high self-sufficiency* (Denmark)
- *Medium spending, high self-sufficiency* (France, Germany)
- *Low spending, high self-sufficiency* (Australia, Canada)
- *High spending, low self-sufficiency* (Netherlands, UK)

South Africa is something of a special case, since local authorities raise much of their funding from electricity, gas and water charges, as well as charges related to waste and sanitation.

Danish local government is in a league of its own in terms of share of spending and quite high levels of self-financing. The latter would be significantly higher if social protection expenditures, funded by government transfers, were stripped out. Study of a wider peer group would emphasise the degree to which it is an outlier, along with Sweden; in both countries local government

has both unusually wide-ranging functions and a strong tax base to support it.

In Canada and Australia, local government is also quite self-sufficient, but for the opposite reason: a narrow funding base is supporting relatively narrow competences. To some extent, this reflects their federal structures. In both cases, sub-national spending is concentrated in the higher tiers, notably regarding areas such as education; however, there are also significant differences between the two countries.

Australia is much the more centralised, with taxation powers concentrated in the Federation; consequently, it has the highest Vertical Fiscal Imbalance of any federal country.⁵⁶ The Commonwealth raises 82% of tax revenue, the States 15% and local government just 3%. With the States delivering many of the larger-scale services, it is they who suffer most from the imbalances: local government is fairly self-contained.⁵⁷ However, the level of financial autonomy varies, with some local governments in remote and rural areas much more dependent on grants from higher tiers of

⁵⁶ Pricewaterhouse Coopers (2006), p. 51

⁵⁷ Pricewaterhouse Coopers (2006), p. 4

government; in some cases this can run as high as 70%.

In Canada, the balance of financial power between the provinces and the centre is different: the provinces both account for a bigger share of government spending, and finance more of it themselves. Local government's share of spending – even when independent school boards are stripped out of the figures – is significantly higher than in Australia, though still relatively low. Just over half of local government income is from taxes, and dependence on government grants is low.

Germany once again represents a rather different federal model; though the *Länder* are the dominant element in sub-national government, local authorities have significant administrative functions and account for more than 15% of public spending. Taxes provide more than a third of local authorities' funding, though the portion is higher in the former West Germany; local government in the "new *Länder*" is much more dependent on grants. Of the rest, state grants make up a little over a third of income while fees, licenses and other such sources of income make up over a quarter.

French local government, like that in Germany, is in the middle of the spending range. Self-sufficiency is quite high; the Constitutional Council now requires that the share of "own financing" by local government should not fall over time, although its definition of this includes shares of national taxes.⁵⁸ Levels of self-financing are in inverse relationship to the tiers of government, with *communes* (which account for more than 60% of the total tax take) covering most of their costs, while *régions* receive some 45% of their income from central government. In the case of *départements*, transfers from the centre are boosted by payments related to social insurance.

Not for the only time, English local government's closest parallel is in the Netherlands. The figures for the latter include Provinces and the independent

Water Boards as well as the most visible forms of local government, the municipalities. Taken on their own the municipalities' spending would represent a little over 10% of GDP, but the share of spending raised by their own taxes would still be low.

In both countries, local authorities have quite wide-ranging (albeit different) functions. In part, this reflects the absence of an intermediate tier in England. In the Netherlands, the Provinces play a relatively modest role, although they are included in the figures shown in Table 3. Thus, even though the share of spending for local government is high, so is that for central government: of our peer group, only France is more dominated by spending from national government. In both England and the Netherlands, however, taxation capacity is far below levels of spending; even after other sources of income, such as fees, are taken into account, dependence on central grants is high.

Diversity, buoyancy and discretion

Our peer group shows a varied picture as regards the nature of its tax revenues. Some have as restrictive a tax repertoire as do English local authorities: others are much more broadly-based.

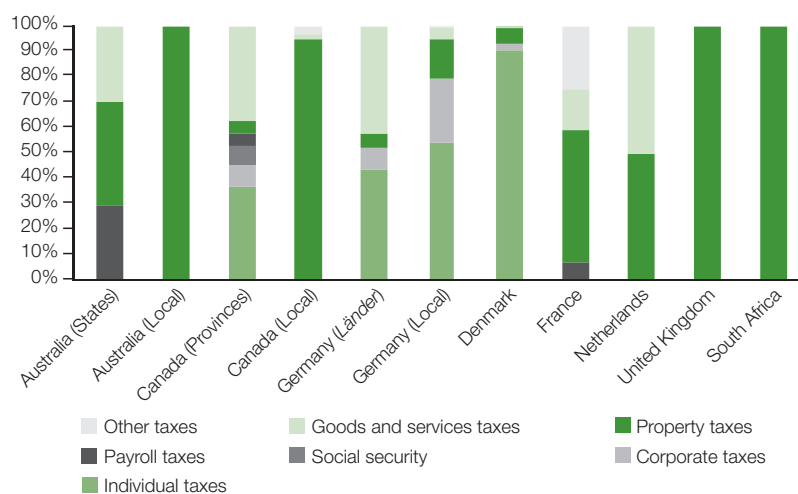
The Commonwealth countries are heavily reliant on property taxes. Once more, Australia is the most restrictive; while the States have a variety of funding sources (though not income tax), councils are entirely dependent on rates. This narrow base, coupled with increasing pressures to provide a variety of services, has put growing pressure on local authority finances in recent years. In addition, state governments have raised their take from property taxes, effectively crowding out local government.⁵⁹

In Canada, while property taxes predominate, municipalities also have access to some consumption and other taxes, often sharing some revenues with provinces. In addition, in 2005-06, federal government undertook to share 1.5 cents per litre (out of a total of 10)

58 Council of Europe (2007), p. 81

59 Pricewaterhouse Coopers (2006), p. 50

Chart 1: Share of tax income by type



Source: OECD (2008), Statistics South Africa (2008). Data is for 2006.

petrol tax with local government, or 5 cents in the case of large cities. The aim is for the different tiers of government to work better together to tackle issues such as the infrastructure deficit. The sharing of federal gas (petrol) revenues meant committing \$5bn to fund municipal infrastructure in 2005-10.

South African local authorities also rely solely on property taxes (rates), although – as noted previously – utility and other charges are a major source of income for them. In addition, they benefit from their “equitable share” of nationally raised revenue.

The European picture is very varied. For Denmark, individual income taxes predominate, though others, including property taxes, play a part: a case of buoyancy more than diversity. The Netherlands splits equally between reliance on property and on consumption taxes, though the contribution from both is quite modest.

France and Germany both have some variety of sources, though in very different forms. Most of the tax revenue of French local authorities comes from three forms of property tax, plus a business tax, which gives an element of buoyancy. The system does, however, have its drawbacks. One is complexity, given that all the tiers of government – plus now, under some circumstances,

the new groupings of *communes* – can make calls on these taxes.⁶⁰ The system is “archaic” – the taxes essentially date back to the revolution – and some of the taxes have been seen as unfair or, in the case of the payroll element of the business tax, “economic masochism”.⁶¹ The result has been a modest but significant shift in local authority revenue sources. The payroll element of the business tax was phased out in 1999-2004, and there have been other measures to ease the tax burden on businesses. *Régions* lost the right to levy one of the four taxes, the inhabitant tax. These losses of revenue have been compensated by state grants. Meanwhile, with additional functions being passed to the local authorities, the role of allocated taxes (*fiscalité indirecte*), such as a share of the petrol tax, has increased.

In Germany, by contrast, local authorities draw on individual, corporate and consumption taxes, as well as property taxes.

However, the German approach raises the issues of assignment of taxes and the degree of control that local authorities have over tax rates. As Table 4 shows, most local authorities within the peer group have high levels of control over the taxes that they levy, and in federal countries they usually have more discretion, albeit over a

60 Wollmann (2008), pp. 393-4

61 Knapp and Wright (2006), p. 380. For up to date details of the changes, see Ministère de l'intérieur (2008)

Table 4: Discretion over taxes

	% of total with:	Discretion rates and reliefs	Full discretion rates	Partial discretion rates	Discretion reliefs	Tax sharing	Sets by central government	Other
Australia	States	53.2				46.8		
	Local government	100						
Canada	Provinces	98.4				1.6		
	Local government	1.8	95.6				1.6	1.1
Germany	<i>Länder</i>		2.9			81.4	9.4	6.3
	Local government		16.9	42.8		39.4		0.9
Denmark			86	4.7		2.9	6.4	
France		72.1		8.5	9.1		3.6	6.6
Netherlands			73.6	26.4				
United Kingdom				100				

Source: OECD (2008). Data is from 2005.

narrower range of taxes, than do the higher, sub-national tiers. Canada, in which the provinces enjoy very high levels of fiscal autonomy, is a rare exception.

In Germany, however, local authorities have a tax profile that is in some respects closer to that of a tier of sub-national government, trading off greater diversity and buoyancy against less discretion. The tax base is varied; the major sources are a 12.5% share of federal income tax, local business tax, local land tax and a 2% share of value added tax. Clearly, the shares of federal income and value added taxes also provide some buoyancy. However, local government controls the rates only for the local business and land taxes, as well as some smaller revenue earners such as gambling taxes. Thus the share of revenue earned from fully controllable taxes is under 20%. (With respect to the business tax, local government has to share part of the proceeds with the *Land* and federal governments. Deductions by the latter have grown and local government now takes only 30% of the total).

Capping and control

Rate-capping in the 1980s, and the subsequent application of capping to council tax, has been one of the most visible features of English local government's subordination and

constraint. The evidence of our peer group suggests that the experience is not unique, but that there are some lessons to be learned.

The peculiar nature of property taxes – their lack of buoyancy, and their weak correlation with income – heightens their political sensitivity. As a result, local authorities who are solely or predominantly dependent on them are especially vulnerable to central intervention. This has been the experience in Australia. Rate-capping has been pursued in New South Wales for many years. Elsewhere, there appear to be more informal constraints on the ability to raise rates. This, coupled with increasing service demands, has raised questions over the long-term financial viability of Australian councils while infrastructure spending has been deferred.

Dutch experience also demonstrates the political vulnerability of property taxes in a way that might seem familiar to English local government. The tax – the biggest source of independent revenue for Dutch municipalities – was divided between that paid by owners of homes and that paid by users; after some years of sharp tax increases, central government pegged increases in the tax paid by users to the inflation rate, with effect from 1 January 2006. Local government was to be compensated by payments from the

centrally-allocated Municipalities Fund, a further restriction of municipalities' financial freedom. The municipalities attempted a legal challenge on the basis of the European Charter, but the courts ruled against them, arguing that the Charter was not binding and so national legislation took precedence.

However, not even a more buoyant funding base guarantees local government immunity from central intervention regarding tax levels. Sweden provides an example from outside our peer group; there municipalities twice experienced a tax freeze during the 1990s.⁶² Within our peer group, Denmark provides a unique example of central intervention taking place not in spite of but because of local government's financial strength and buoyancy. Macroeconomic policy, including taxation levels is the preserve of central government; since 2002, in accordance with the policy of the Conservative/Liberal administration, taxes have been frozen and spending growth held down. Since local government, and especially the municipalities account for a large portion of spending and taxation, it has to operate within this framework.

However, the process is not unilateral, except for the setting of the overall cap. Central government negotiates with Local Government Denmark over pressures on spending that will need to be funded by additional grant. In addition, the freeze applies at an aggregate level for the local government sector, not to individual local authorities. Once agreement is reached between the centre and Local Government Denmark, the latter oversees negotiations among local authorities so that those with specific pressures to be accommodated can increase taxes, to be offset by reductions by other authorities. Overall, the process reflects significant intervention from the centre on the municipalities, but with the two sides negotiating as relatively equal partners: a reflection of local government's wide-ranging role in public service delivery.

General versus specific grants

Grants from higher tiers of government can be broadly divided between general grants (usually aimed at some sort of equalisation, compensating areas with greater needs and/or weaker tax capacity) and specific grants (tying the recipient to specific programmes or projects). In some countries – such as Germany and the Netherlands – there is a clear differentiation between local authorities acting within their own areas of competence, and actions which they undertake in partnership with or as an agent of a higher tier.

Table 5: Share of general grants

		General grants as % of total
Australia	States	7.1
	Local government	83.3
Canada	Provinces	81.4
	Local government	4.3
Germany	<i>Länder</i>	42.5
	Local government	44.4
Denmark		56.3
France		88.3
Netherlands		26.4
England		38.2

Source: Blochliger and King (2006); Department for Communities and Local Government (2008). Data for England is 2008-09; for other countries it is 2004.

This latter feature makes the growth of specific grants ambiguous; while it may represent a higher tier of government tightening its grip on local authorities, it might also represent greater administrative devolution. This development is particularly marked in Germany. Nonetheless, as a rule of thumb a high level of general grants offers local government greater freedom.

Thus, within our peer group, French and Danish local authorities – whose overall dependence on grants is in any case low – also have relatively low exposure to specific grants. In the case of Danish local govern-

⁶² Feltenius (2007), p. 465

ment, the specific element largely reflects reimbursement for welfare spending. In France, grants from central government are overwhelmingly general as regards current spending; there is more earmarking for capital spending, often involving joint projects between the centre (or the region) and the locality. Grants include the *dotation générale de décentralisation*, aimed at offsetting the effects of new functions being transferred.

Australian and Canadian federalism takes them in two precisely opposite directions. In Australia, the States depend on specific grants from the centre, but the latter also provides predominantly general grants to local government, the so-called FAGs (Financial Assistance Grants). These are paid via state governments, which are required to set up Local Government Grants Commissions to determine their allocation to local governments on the basis of population, needs, funding capacity, roads to be maintained and other criteria. However, for the purposes of local government these are general, untied grants. In Canada, by contrast, interaction between the centre and local government is minimal; grants come largely from the provinces and are overwhelmingly specific.

Dutch municipalities, already very dependent on grant income, were subject to a wide and proliferating range of specific grants, which until recently made up the bulk of grant income. This has, however, been reviewed as part of the wider reappraisal of the central-local relationship epitomised by the Code on Inter-administrative Relations; a committee examined the grants – all 155 of them – and recommended both their reduction and a streamlining of the regulation around them. Thus, in 2007, the formula-driven general grant (the Municipalities Fund) was E14.8bn (33% of income), while specific grants made up E11.9bn (26.5%).

England has seen a similar debate in recent years, with commentators such as Lyons recommending a scaling back of specific grants. At present, specific grants

(excluding the broadly housing-related grants that are not included in Aggregate External Funding) are almost double general grants, including the non-domestic rate. The main factor behind this is the creation of Dedicated Schools Grant, which makes up £29bn of the £42bn specific grants. This dwarfs efforts to move in the opposite direction through the rolling-up of specific grants into the Area Based Grant and other general funds, which will at maximum amount to £5bn.

Even if the grant regime is general, there is a question as to how fair its allocation is seen to be. In Australia, where financial relations between the Commonwealth and the states are characterised by severe Vertical Fiscal Imbalance and financing capacity is strongly centralised, there is an effective arrangement in the Commonwealth Grants Commission. It is also durable; it has been in place since 1933. The CGC is an independent advisory body, working to terms of reference set by the Commonwealth after discussion with the states. It examines the taxable capacity and revenue sources of the various states and then seeks to achieve an equalisation of available resources. Its work provides the background for negotiations between the Commonwealth and the states. The CGC's work does not directly include or affect local government. However, at state level, the Local Government Grants Commissions undertake a similar role in advising State local government ministers on the recommendations that they make to the federal minister on allocation of grants to local government within their state.⁶³ These recommendations – which are almost always followed – are based on broad criteria set out in national legislation and publicly disclosed methodology.

Shifting the burdens

A common experience of local government in our peer group has been what in Australia is called “cost-shifting” and in Canada is

⁶³ Local Government Association (2006)

called “downloading” – the transfer of responsibilities, and the financial burden that goes with them, without the funding to match them. The result has been severe pressure on local taxes and services.

This effect has been powerful in Australia, as the weakness of the local government tax base has collided with growing service demands. Australian local authorities’ functions have tended to change and increase over time, with a sharp rise in recent years in “human services” (such as social services) remote from the earlier focus on property-based services such as roads and waste.⁶⁴ This reflects local pressures, inducements from state and federal governments and withdrawal of services by the latter tiers. In the latter case, where local government has already been involved in provision of a service, it can be left as the sole provider or funder. Other examples can include “raising the bar” through increased regulatory standards, or withdrawing funding where local government has been providing a service – for which demand remains – on behalf of other tiers of government.

Canadian local government has had similar experiences, with costs and services being shifted towards it, increasing strains on property tax while growth in charges fills some of the gap. There has, however, been some progress on provincial-local relations and revenue-sharing.

Elsewhere, legislation has also contributed to the pressures. The biggest source of complaint in England in recent years has been the Licensing Act. In Germany, federal and state governments added to local governments’ tasks while also pre-empting their revenues; a particular example of the former was the imposition of nursery education obligations. In France, the second wave (“*Acte II*”) of decentralisation in 2003 saw the transfer of income support and labour market reintegration schemes to *départements*. However, this was a function that had been shared with

the state administration since the 1980s. In addition, this involves an essentially administrative transfer; there is little political decision-making that accompanies this role, and local authorities feared that they would have to cut back on their core, self-governing functions to fund this new task. State support was inadequate, especially since it was not set to grow after 2004, even though the costs of the task are expected to increase.⁶⁵

“ The Local Government Grants Commissions use well-established methods that give councils reassurance that grants are allocated on the basis of relative need ”

Adrian Beresford-Wylie, Chief Executive, Australian Local Government Association

Given the visibility of the problem, most countries have also made efforts to tackle it. In Germany, most *Land* constitutions have incorporated rules requiring additional financial resources to match new tasks, while the 2006 version of the Basic Law outlawed federal apportionment of tasks to municipalities. The French constitution offers some protection against the impact of changes in responsibilities, though it fails to take into account longer-term pressures (which helps account for the cool reception that many in the *départements* gave to the allocation of new social responsibilities to them). More generally, local government has been highly sceptical as to the degree to which it would really be protected from dumping of responsibilities without compensation.⁶⁶

In the Netherlands, Section 2 of the Allocation of Finances Act states that if changes in government policy increase the tasks to be undertaken by municipalities, there must be a clear indication of the financial consequences for local authorities and how these are to be met. There are also twice-yearly meetings of the Government

⁶⁴ See long-term trends in Parliament of the Commonwealth of Australia (2003)

⁶⁵ Kuhlmann (2007), pp. 7-8

⁶⁶ Knapp and Wright (2006), pp. 386-7

Consultative Committee on Financial Relations, bringing together the Cabinet with the provincial governments' and municipalities' associations. Here issues around Section 2 of the Act and other aspects of central-local relations are discussed.

In Australia, the Commonwealth, the States and ALGA reached an agreement (in April 2006) to tackle the cost-shifting problem. The financial impact of any transfers of functions is to be taken into account, and financial arrangements to be agreed and monitored.

Perhaps the most comprehensive and attractive approach is to be found in Denmark. Annual negotiations between central and local government, operating under the "Extended Total Balance Principle" have been in place for twenty-five years. Negotiations cover the changes in general grant required to compensate local government for the financial impact of policy changes, including the impact of EU as well as national legislation. The impact of demographic change is not, however, covered by the process.

The process differs in two respects from the "new burdens principle" applied in England. Firstly, local government is not merely a consultee; local government representatives negotiate directly with spending ministries, with the Treasury acting as an umpire and intermediary if agreement cannot be reached. Secondly, the process can see adjustments to the grants made in subsequent years if initial estimates turn out to be incorrect and of significant magnitude.⁶⁷

The scheme is not a panacea for local government. It remains a matter of political negotiation, and with public spending coming under pressure, agreement is likely to become ever harder to reach over the coming years. However, it treats local government as a partner in the process and gives it significantly greater negotiating clout than is the case in England.

Summary and conclusions

The distinctive feature – and problem – of English local government finance can be stated simply. In terms of their functions and expenditures, English upper-tier authorities are in the middle of the international range. They undertake a number of functions that in federal systems are the preserve of the sub-national tier. However, their funding base resembles that of local authorities with more limited functions, notably those in Commonwealth countries. It rests on a single tax that is devoid of buoyancy. Only Dutch authorities compare with their relatively wide functions and narrow tax-raising powers.

The low self-financing ratio of English local authorities gives a clear but partial indication of the problem. The scale of specific grants – and in particular the DSG – is the other part of the picture. Because DSG is to a significant degree passported to schools, local authorities' self-financing of the elements of their budgets that they do control is higher than it looks. However, this simply restates the problem. The controllable budget is to a significant degree driven by social services expenditure, and in spite of DSG there are still significant sums to be found for expenditures on children, which can create knock-on pressures elsewhere in the budget.

Experience from a number of countries – notably Canada, Australia and the Netherlands – emphasises the limits that dependence on a property tax alone puts on local government, especially as its functions start to expand. This is scarcely new; ambitious councils have long sought to diversify their income streams. Joseph Chamberlain's "gas and water socialism" was as much about providing Birmingham City Council with extra revenue as it was about tackling unmet need.⁶⁸

The evidence from the peer group makes clear that central government intervention in response to local tax increases is

⁶⁷ Local Government Association (2006)

⁶⁸ Hunt (2004), p. 337

not unique to England, nor even to countries dependent on a property tax. Nonetheless, it is clear that, because of their visibility, lack of buoyancy and limited correlation with income, property taxes are particularly vulnerable to stirring political disquiet and consequent intervention. In addition, the scale and duration of that intervention in England, starting with rate-capping a quarter of a century ago, is highly unusual in international terms.

This comparison underlines the case for reform proposals that have long been canvassed. The LGA argued to the Balance of Funding Review in favour of a “Combination Option”. This would have given local authorities access to a reformed council tax, a “progressively localised” business rate and a share of income tax, perhaps initially as an assigned revenue; in other words, adopting elements of the German model. Similar “radical but politically feasible” proposals were put forward by Policy Exchange and the New Economics Foundation. Lyons, while more cautious on business rate relocalisation (though favouring a supplementary business rate, a proposal adopted by the government) was also very sympathetic to assignment of some national tax income.⁶⁹ We strongly support reform along these lines. Ideally, we would like to boost local government’s decision-making power over tax-raising, since that is good both for local accountability and efficiency. However, assignment of a share of income tax would at least enhance diversity and buoyancy: another possibility would be assignment of at least a share of the business rate, since

this would increase local authorities’ direct interest in promoting economic development while calming business fears that rates would be raised.

The peer group’s experience also demonstrates widespread experience of higher tiers of government passing down financial burdens to local authorities. It also suggests that legal and constitutional provisions, while appealing and helpful to a degree, are only part of the answer: the wording of such provisions is usually sufficiently vague to offer only limited comfort to local authorities. The key feature that makes the Danish Extended Total Balance principle particularly attractive is that it entrenches local government in the budget negotiation process. In this case, our wider constitutional themes – treating local government as a more equal and established partner of the centre – are also reflected in the best approach to this financial issue. We therefore recommend that the key mechanisms of the Danish approach be adopted in England.

Finally, we recommend that the Australian Commonwealth Grants Commission be used as a model for an independent body that could support a more transparent grant process within England. Even if self-financing increases, as we believe it should, there will be a need for some redistribution: in England it has been notoriously opaque, and the four block formula has in some respects worsened the problem. An English equivalent to the CGC would be an important step towards transparency and greater perceived fairness.

⁶⁹ Travers and Esposito (2003-04); Lyons (2007), pp. 354-6

5

Intervention from the centre

Under any system, central government will retain certain legislative prerogatives. This can act to weaken local government's autonomy; in federal and decentralised Germany for example, the federal government has been seen to circumvent its lack of administrative capacity by passing very detailed legislation setting how its policies should be carried out.⁷⁰ (By contrast, one of the aims of the recent Danish local government reform has been to reduce over-prescription from the centre).

Central government will also often set a framework within which local authorities operate in areas such as planning. Thus French local plans have to take account of a variety of regional and national guidelines. Similarly, in the Netherlands, although municipalities' town plans no longer require approval by the provinces, they have to take account of the latter's plans, and of key decisions in national spatial plans. In addition, a province or the central government can adopt projects that conflict with, and ultimately force changes to, municipal plans.⁷¹

However, administrative capacity is another matter. The degree to which this is held by central, sub-national and local government is an important element in the latter's independence and discretion. We examine how the different members of our peer group compare in this respect before examining two "big sticks" available to the higher tiers of government: performance management and reorganisation.

The central state's presence

The level of the central state's presence in localities unsurprisingly follows on from the division of functions described in the previous section, and is well represented by the breakdown of government employees between the central, sub-national and local levels.

Table 6: Public employment by tier of government

% of public employment	Centre	Sub-national	Local
Australia	12.1	77.1	10.8
Canada	13.2	51.9	35
Germany	11.5	52.2	36.3
Denmark	19.8	15.9	64.3
France	51.6		25.3
Netherlands	74.2	4.7	21.1
United Kingdom	47.6		52.4

Source: Wollmann (2008). Data are from 2000. Most of the "missing" proportion of French public employment is accounted for by public hospitals. Data not available for South Africa.

The three federal countries in our peer group stand out, with central government commanding less than a fifth of the total. In Germany, the federal government is restricted in its ability to have field offices in the localities to a narrow set of functions delineated in the Basic Law. In addition, the *Länder* delegate many of their functions to local government; between 70 and 85 per cent of EU, national and *Land* legislation is implemented by local authorities.

70 Wollmann (2002), p. 8

71 Council of Europe (2007), pp. 103-4

Nonetheless, because of their role as employers of teachers and police, the *Länder* account for the biggest share of public sector employees.⁷² Canada and Australia present a similar picture, with local government bulking larger in relation to the sub-national tier in Canada.

In Denmark, in accordance with the general decentralisation of functions that has taken place since the previous local government reform in 1970, the centre accounts for only a fifth of total public sector employment. The general philosophy – albeit put into practice in less pure form than in Sweden – is one of a fairly lean centre setting frameworks and local government taking on major executive responsibility.

The recent reform has strengthened both the centre and the municipalities at the expense of the intermediate tier (now the regions, previously the counties). Roles taken on by the centre include further education and upper secondary schools; some cultural facilities of national significance; and the creation of a centre of specialist knowledge and support in social services. In addition, the state Employment Service is working closely with municipalities in jointly run job centres, and the two have entered into contracts to boost employment. The state, operating at a regional level, reserves the right to intervene when progress is insufficient.

France is an intermediate case. Prior to the reforms of 1982-3, the administrative capacity of local authorities was very weak, and the *Préfet*, as representative of the centre was the dominant figure. He was not only the state's representative but also chief executive of the *département*. He also had an ex ante supervision (*tutelle*) of local authorities' actions, overseeing their activities in terms of substance as well as legality. In addition, France had – and still has – an unusually high number of central government employees out in “field operations”.

95% of state civil servants work outside Paris, and state civil service has roughly twice as many employees per thousand inhabitants as local authorities do. The contrast with neighbouring Germany is sharp.⁷³

In practice, the central state was never as omnipotent as this suggested. For one thing, the role of many local mayors under the *cumul des mandats* as powerful figures in national politics as well gave them an extra source of power and influence. Secondly, the state administration in the localities could often march to its own drums and prove hard for Paris to control. Nonetheless, the system was one of weak local democratic legitimacy.

While the waves of reform since 1982 have changed this picture and enhanced the capacity of local authorities – most notably the *départements* – the central state has barely been rolled back. Planning issues provide an example of this. When planning functions were passed over to the *communes* in 1982-3, the staff of the DDEs (*directions départementales d'équipement* – the local arm of the Ministry of Infrastructure) did not come with them. Thus, for many years, local authorities remained reliant on the DDEs; this has declined somewhat, but is still a significant factor, especially in smaller, weaker *communes*. In addition, the *Préfet* continues to play a significant role in the development of strategic plans.⁷⁴

One aspect of central-local relations in France will, however, sound familiar to English observers: that of partnership. This reflects the complexity of local structures, since *régions*, *départements* and *communes* all have rights of general competence, and so take on overlapping responsibilities, as does the “deconcentrated” state apparatus (which it is now the *Préfet's* role to attempt to co-ordinate). The state has therefore arranged partnerships and contracts with the different arms of local government, providing specific grants in return for

72 Wollmann, (2002), pp. 3-6

73 Kuhlmann (2007), p. 24

74 Wollmann (2008), pp. 451, 463-6

agreed outcomes. Urban policy is a strong example of this. In practice, it is very messy: “a system of partnerships in which everyone does everything.”⁷⁵ Again, there is a contrast with Germany; there, although urban partnerships have been encouraged by the Federal and *Land* governments, municipalities have taken a strong lead in their planning and implementation. There are also many examples of partnerships – “mayoral conferences” – driven by the municipalities themselves rather than from the upper tiers of government.⁷⁶

“ The Netherlands has the highest central government share within our peer group, largely because it has gone as far, and in some respects further than the UK in putting schools and housing at arm’s length from local government ”

It is in the Netherlands that the central and local states are most intertwined. This is seen in terms of formalities; the Crown officially appoints both the royal commissioner, who chairs the provincial council, and the mayor of a municipality. However, the latter is done on the basis of the recommendation of the municipal council, which also elects the executive (the aldermen), which is chaired by the mayor.

The Netherlands has the highest central government share within our peer group, largely because it has gone as far, and in some respects further than the UK in putting schools and housing at arm’s length from local government. Ministries have field departments and inspectorates, monitoring the implementation of legislation. Ministries also have independent agencies (ZBO), which carry out ministry policies, often in areas that affect local authorities; board members are appointed by the minister. The role of these agencies was expanded when central government

shed a number of its functions amid the financial pressures of the 1980s.⁷⁷ In some respects, this brings the Netherlands closer to the “local quango state” that grew in England from the 1980s onwards.

Inevitably, this requires co-operation between local authorities and these other bodies, but partnership structures do not seem to have reached the scale and complexity seen in England. They are also arguably less centralising. In urban regeneration, the “big cities policy” has set overall guidelines for cities (including “performance fields”), and cities have been required to produce five or ten year plans which inevitably involve partnerships – but beyond this, the municipalities have considerable flexibility in how and when the money is spent.⁷⁸

More generally, the Code on Inter-administrative Relations identified a need and aim to reduce complexity and make responsibility clearer, ideally through elected authorities.

Compared with much of the rest of the peer group, England has a large central government sector. In part, this is because of the absence of an elected, service-delivering regional tier; as a result, local government’s share is also high. However, it also reflects the strong presence of the centre at local level, not only through national agencies such as JobCentre Plus, but also through the growth of quangos and (more ambiguously) partnerships over the last quarter of a century. Although there are similar developments in other countries, both within and beyond our peer group, England is seen as having gone further and faster in this direction than elsewhere. Partnerships were presented as a way of putting local government at the centre of wider local “governance”. So far, academic literature has seen them as an instrument of the centre, though it remains to be seen how far, if at all, the provisions of the 2006 Act, second-generation Local Area Agreements (LAA) and the provisions of Comprehensive Area Assessment(CAA) change this.⁷⁹

75 Bloomfield (2006), p. 11; Wollmann (2008), pp. 43, 399-400. The quotation is from the report (2000) of the Mauroy Commission on decentralisation

76 Wollmann (2008), p. 44

77 Council of Europe (2007), p. 97; Bloomfield (2006), p. 17

78 Leunig, Swaffield and Hartwich (2008), p. 29

79 Wollmann (2008), p. 50

Local government as agent

Analysts of local government have often debated how far it performs a “choice” role (enacting the preferences of a local community) and how far an “agency” role (on behalf of national or sub-national government). In some members of our peer group, this distinction is made clear and runs through the operation of local authorities.

Germany makes the most explicit distinction. Counties and municipalities take on both tasks in which they act as self-governing bodies, and which are subject only to legal oversight, and *Land* tasks that are “delegated” to them. In the case of the latter, the chief executive of the municipality or county, rather than the elected politicians, takes responsibility for the execution of the tasks and is subject to significant oversight – relating to effective delivery, not just legality – from the higher tier of government (the *Land*). In particular, the local authority acts as the *Land’s* agent in functions such as registration and also enforcement in areas such as environmental protection and building regulations. As discussed in the previous section, there is also a more general process of “deconcentration”, in which other *Land* functions are passed to local authorities. In dealing with the local authority, the *Land’s* area Director (*Regierungspräsident*) performs a function rather like that of the French *Préfet*. This intervention can go “to the point of direct instruction and intervention”. However, in practice, the intervention does not seem to be especially heavy-handed.⁸⁰

The trend towards increased ‘deconcentration’ appears to be gathering momentum. In the *Land* of Baden-Württemberg, most local field offices of *Land* administration have been scrapped and their functions transferred to local government. Since the enactment of these reforms in 2005, public employees at

county level have roughly doubled as they have been transferred from the *Land* administration.⁸¹ This is, however, a distinctly ambiguous development. In one sense, it is a “false decentralisation”, with local authorities taking on administrative tasks of the higher tier. For the stronger among them, it enhances their administrative role and capacities. However, weaker authorities feel overburdened by the new responsibilities, and the pressures it puts on them may undermine their ability to deliver in the areas of their own competence.⁸²

In the Netherlands, the theory of “co-governance” (*medbewind*) by the centre and local authorities is set out in the Constitution, which distinguishes between local authorities’ role in implementing national legislation and their purely local role. A key feature of the Code on Inter-administrative Relations was to clarify the implications of this distinction; the central state could only play a directing role when “joint responsibility” was involved.⁸³

There are also elements of this separation of roles in France. In particular, the mayor, while leading the *commune*, also acts as the state’s representative. This takes on a particular significance in planning and development control matters: when the mayor acts on behalf of the state rather than the *commune* (usually because of the absence of a required development plan), any decisions require the consent of the *Préfet*.⁸⁴

The other members of our peer group do not make this formal distinction, although specific grants represent a way for central or sub-national government to achieve its desired policy ends, and usually carry with them heavier reporting requirements. There is certainly no such distinction in England, with the result that a very wide range of local government activities may be considered fair game for some form of central oversight.

80 Wollmann (2007), p. 3; Bloomfield (2006), p. 6

81 Kuhlmann (2007), p. 5

82 Kuhlmann (2007), p. 6

83 Ministry of the Interior and Kingdom Relations (2005), Section 1 d

84 Wollmann (2008), p. 470

Performance management

If rate-capping was the definitive feature of the centre's restrictions on English local government for much of the eighties and nineties, it is the development of elaborate performance management systems that has defined the last ten years. Given that budgetary pressures and rising public expectations have been a common feature of advanced countries in recent decades, improved performance management has been a vital concern in much of our peer group. However, the drive to improve has tended to come from individual authorities, or from within organised local government, rather than from above.

“ In Germany, innovation in public administration has been driven chiefly by local government rather than central government”

Dr Stephan Articus, Executive Director, Association of German Cities

Germany provides the most striking example of this pattern of change. Faced with huge financial pressures post-reunification, local authorities had reason to look favourably at the “new steering model”, the German version of “reinventing government” or the “new public management”. The critical role in its diffusion was played by KGSt, a consultancy funded by the municipalities and counties. In other words, this was a bottom-up – or at least horizontal – process rather than a top-down one. The German Association of Cities has also played a role in diffusing innovative practice. Although full adoption of the model was patchy, major changes in service delivery were made while costs were reduced: staff numbers fell by a third in the decade after 1992.⁸⁵

Admittedly, there have been top-down elements – for example, federal legislation on opening out the market in social care – but this to some degree followed from a debate that had taken place within local

government. In addition, the Federal and *Länder* governments have encouraged innovation through special Task Forces, funding of pilot projects and the like.⁸⁶

There are, nonetheless, some cases of increased intervention by the *Länder* in the affairs of local government; financial pressures on local authorities have led the *Länder* to push through new, more exacting accounting requirements for local government.⁸⁷ Finally, at least some *Länder* are showing greater interest in local authority performance management, requiring councils to operate a system that generates much more information about outputs.⁸⁸

In the Netherlands, central government has been somewhat more involved in local government performance management; however, it has played a steering or encouraging rather than a coercive role. In 1990 it set out Policy and Management Instruments for local government: *Beleids en Beheers Instrumentarium* (BBI).⁸⁹ This recommended that local government use various forms of output-oriented instruments; however, the guidance was neither detailed nor prescriptive. Nonetheless, Dutch authorities moved rapidly to adopt the new management methods. In the words of one observer:

Because central government did not prescribe changes [during the 1990s, as performance management became more topical], the initiatives [executed by municipalities seeking to improve their performance] varied in form and content. For example, several municipalities introduced further changes in organisational structures to make them more flat and/or to organise them around similar types of processes. ... In 2002 and 2003, central government imposed a new obligation on municipalities and provinces respectively. They had to start using outcome budgets or programme budgets, which, in addition to output budgets, should indicate the most important goals of policy programmes as well as performances to be achieved. Again, local government organisa-

85 Kuhlmann (2007), p. 6, pp. 17-18

86 Bloomfield (2006), p. 8

87 Kuhlmann (2007), p. 26; Bloomfield (2006), p. 8

88 Bloomfield (2006), p. 8

89 Bloomfield (2006), p. 17

90 ter Bogt (2008), p.35

*tions were free to determine the form of the budgets for themselves.*⁹⁰

Central government's approach thus left quite a lot of discretion to local authorities: it was also collegiate rather than authoritarian. The period 1999-2002 saw central government adopt monitoring and measurable targets for a number of areas to be delivered by the municipalities. However, this was accompanied by bi-annual consultations in which the plans were discussed, and which not only gave central government influence over municipalities' performance, but also "gave more scope and policy access to local authorities." As for detailed performance management, the VNG (municipalities' association) has led moves to agree benchmarking performance indicators among the sector. The aim has been for these to be used as publicly available information, but not to be enforced by central government.⁹¹

In France, improvement remains very much a matter for local authorities themselves. Audit of French authorities by the National Court of Auditors and its regional offices remains "relatively general"; the Court's reports have no legal sanction. There is no extension of the audit function to cover performance issues. The overall attitude was expressed by one mayor: "Nobody from the national state would ever dare to intervene in the effectiveness of local services. This is unheard of. If people aren't satisfied they don't vote for you next time."⁹² Radical stuff from an English perspective.

Until recently, the approach in Denmark was similarly laissez-faire. However, with decentralisation giving the municipalities ever greater functions, central government has become more interventionist. It sees tighter performance management as a *quid pro quo* for local government's enhanced functions and financial autonomy. The performance management system is in its very early stages of development; the government is establishing an Evaluation Institute,

while issues such as the use of indicators are a subject of negotiation between central government and Local Government Denmark. It remains to be seen how far the system develops in consensual fashion, or is imposed.

In Canada, the most developed performance management regime is in Ontario, combining bottom-up and top-down elements, though the latter is still significantly different from the English system of Best Value and its successors. In 2000, the provincial government launched the Municipal Performance Measurement Programme (MPMP), requiring municipalities to report annually on 60 indicators for a variety of service areas. This system is compulsory. However, it is not accompanied by a league table system – any comparisons of authorities with one another are left for local media to do – and does not involve a heavy inspection regime. Subsequent development of the system to assist authorities in making use of its data and to strengthen their performance measurement and management has been undertaken by the provincial government in partnership with the Association of Municipalities of Ontario (AMO). Meanwhile, the biggest municipalities have developed a system for sharing performance data and best practice, the Ontario Municipal Benchmarking Initiative (OMBI).⁹³

Australian states have perhaps gone furthest down a path that looks quite like England's. Since 1995, the Minister of Local Government has provided an annual report to Parliament on the state of local government. The development of Performance Indicator systems has been encouraged, although this has been carried out at the level of states rather than harmonised nationally. New South Wales, Victoria, Queensland and Tasmania have reportedly taken the process furthest. There have also been inspections of local authorities (for example, "Promoting Better Practice" reviews in New South Wales) to review

91 Bloomfield (2006), p. 19

92 Bloomfield (2006), pp. 10-11

93 Stephen Finlay, 'Ontario's performance improvement regimes' in Grace (ed.) (2007), pp. 72-74

their strategic and operational performance – all of which sounds a little like CPA, though apparently without the star system. This, and other initiatives within States, has taken place amid concern over the long-term financial viability of perhaps a quarter of Australian councils.⁹⁴

Outside the peer group, Sweden also provides examples of a collaborative approach to benchmarking between central government, organised local government and groups of local authorities in developing indicators in areas such as quality of care for the elderly. In New Zealand, the emphasis has been on using data as part of development of long-term community strategies, with auditors assessing and verifying it and with the key accountability being to the local community.⁹⁵

With the possible exception of some Australian states, the intensity of the English regime looks to be very much an outlier. Some of the early visions of the Best Value regime had been for a relatively light touch operation in which authorities drew selectively on specialist external inspection to aid their improvement plans; however, pressures within Whitehall generated instead a drastically interventionist regime.⁹⁶ Although subsequent efforts have had some success in reducing the burden of targets and inspection, the system still bears some of the marks of its Best Value origins.

Reorganisation

Local government in England has been subject to multiple reorganisations in the last few decades, and for many authorities the threat of reorganisation has been a constant fact of life. Both the reality and the threat have been highly disruptive, not least to joint working between different tiers of government. The experience of our peer group demonstrates that in most countries structures have been subject to significant change, but that the way in which this has been undertaken has varied considerably.

There are few constitutional barriers to these changes in our peer group. In Denmark, a law must be submitted to a referendum if a third of the members of parliament demand it: this creates a pressure for at least a minimum level of consensus about legislation. However, this applies to all legislation, not only that affecting local government. In Germany, the constitutional protection given to local self-government helped derail one attempt at amalgamation of the *Kreise* (in Mecklenburg-Vorpommern), but has not stood in the way of most restructuring.⁹⁷ In general, restructuring is a matter for legislation rather than constitutional provisions.

Denmark has undergone the most recent and sweeping local government reform. The previous reform in 1970 created larger authorities that could take on extra responsibilities: in other words, as part of a process of decentralisation. The changes implemented on 1 January 2007 – replacing 14 counties and 270 municipalities with 5 regions and 98 new-style, more powerful municipalities – derived from the same philosophy. The reform also sought to reduce duplication and blurred accountability, making the municipality the key point of contact for the citizen with the public sector.

The process was top-down, in that it was initiated by national government as part of a wider programme of public sector reform. It was also very rapid: from the appointment of the Commission on Administrative Reform, which examined the case for change, to the new structures coming into place took a little over four years.

Local government was involved in the process in two respects. It had four representatives – both from organised local government and from major authorities – on the twelve-member Commission. The Commission's report (January 2004) identified the need for change, made clear that this should embrace changes in functions as well as local government boundaries and set out the arguments for and against vari-

94 Australian government (2007), pp. 56-9

95 Bloomfield (2006), p. 24; Peter McKinlay, 'A New Zealand perspective' in Grace (ed.), pp. 68-69

96 Campbell-Smith (2008), pp. 426-38

97 Wollmann (2008), p. 36, n. 21

ous options. It was, however, the government which took the decision as to which option to pursue. After the passage of the bill, local authorities helped bring forward proposals for the new municipalities' boundaries, although their proposals had to meet a minimum population threshold set by government.⁹⁸

If Denmark has seen root and branch reform, change in the Netherlands has been more gradual. Article 123 of the Constitution makes clear that, "Provinces and municipalities may be dissolved and new ones established by Act of Parliament." Government has led a process of mergers of municipalities and of water control boards; the former have reduced in number from over 700 twenty years ago to 443 now.

The approach in France defies the national stereotype of an overbearing, rationalist central state; it has been left to their supposedly empirical English neighbours to take the pursuit of large, administratively rational authorities to an extreme degree. Local attachment to the *communes* – and the representation of that sentiment at the highest political levels through the *cumul des mandats* – has proved a powerful roadblock to change. Central government's only attempt to encourage mergers – the 1971 *Loi Marcellin* – rested on a voluntary approach and had minimal results. Instead, over several decades policy has supported inter-communal co-operation. Legislation in 1966 required the creation of *communités urbaines* in four major cities, but the most comprehensive legislation – the 1999 *Loi Chevènement* – relied (successfully) on inducements.

President Sarkozy has set up a committee with a wide-ranging brief that includes both local government finances and structures, with the *régions* in particular coming into question. The committee will report by February; whether the President is more successful than his predecessors in rationalising the current tangled structure remains to be seen.

In the three federal countries within our peer group, decisions on structure rest with the sub-national tier. In Germany, the *Länder* proved capable in the 1960s and early 1970s of carrying through a significant rationalisation of local government, reducing the number of municipalities from 24,000 to 8,400, and counties from 425 to 237. However, there were sharp differences across the country; some areas (notably Bavaria) were keen to sustain local identities, so that very little change took place and intercommunal structures were encouraged as a substitute. Others (above all Nord Rhein Westphalen) were more radical and interventionist, bringing relatively large municipalities into being. The eastern *Länder* saw rationalisation in the wake of reunification, with a further round of changes more recently. The *Länder* have also felt able to reshape local government's constitutions, adopting nation-wide the South German model of directly elected mayors and instituting mechanisms of direct democracy.⁹⁹

In Australia and Canada, local government reorganisation has been a matter for the states or provinces. Experience in both countries has varied. The vigorously top-down approach in 1990s Toronto – which ended up delivering less than the anticipated savings – arguably serves as an example of how not to do it. "The 6 mayors who were affected by the reforms were given 30 days to come up with an alternative to amalgamation. Their alternative was then ignored." Local referendums were also dismissed. Reforms in the Australian state of Victoria some years earlier had by contrast made use of an independent Local Government Board that, while part of a state government-led process, drew in the views of local authorities.¹⁰⁰

Experience in South Africa is once more shaped by the effort to build strong institutions in the post-apartheid era. A reform of local government in 2000 reduced the number of authorities from 843 to 284.

98 Deloitte Research (2006), pp. 8-9; Ministry of the Interior and Health (Denmark) (2004, 2005)

99 Wollmann (2002), pp. 10, 16; Bloomfield (2006), p. 7; Wollmann (2008), pp. 34-6

100 Deloitte Research (2006), pp. 6-8

Conclusions and recommendations

The performance management regime remains the critical (and distinctive) issue for English local government. In spite of movements in the right direction, starting with the Lifting the Burdens task force, the process is still one of excessive “upwards accountability”.

“A key step would be to achieve genuinely local LAAs; at present, there is still too much that smacks of box-ticking exercises to meet national targets”

The experience of much of the peer group indicates that improvement can be driven effectively by information release and the competitive pressure of other local authorities. In England, there is still an excess of national indicators – almost 200, many of them redundant. As Localis has argued elsewhere, many could be scrapped.¹⁰¹ We believe that the remaining National Indicator Set should be tied closely to Public Service Agreements; in other words, local government should only be accountable to central government for those things for which the centre itself is accountable to Parliament. The sector should take more responsibility for developing a set of core indicators, negotiated nationally and for external disclosure. In this separation, there is perhaps an echo of the division, found in a number of members of our peer group, between own functions and those carried out in a association with other tiers of government.

A key step would be to achieve genuinely local LAAs; at present, there is still too much that smacks of box-ticking exercises to meet national targets. While national outcomes and indicators will still play an important part in LAAs, there is a clear case for limiting the number of preferences that the centre can impose and for

more emphasis on local priorities determined locally.¹⁰²

In addition, it should be possible for a regulator to be seen more as a force for overall public sector improvement and less as central government’s enforcer. To be fair, central government has taken some of its own medicine in the form of capability reviews, though the medicine was administered in rather gentler and more collegiate fashion than was the case for local government. Greater equality of treatment is essential; this is the logic behind Sir Simon Milton’s argument for one regulator, answerable to Parliament.¹⁰³

Secondly, the issue of the role and presence of national government’s agencies in the localities needs to be addressed. In some cases, there are powers – in skills, employment, infrastructure and economic development – that can and should be transferred to local government, or sub-regional partnerships led by local authorities. Where national agencies continue to operate at a local level, they need to be able to engage fully with local priorities. This is, of course, the thinking behind the “duty to co-operate” within the 2007 Act and aspects of the CAA; however, a scaling back of the national target regime and shift in the nature of LAAs, as described above, along with an increasingly devolved culture within these agencies, is needed to make a truly local focus a reality.

A second factor that would make local co-operation of this kind effective would be greater discretion and financial incentives. This is certainly the case with respect to employment and efforts to re-integrate people into the workforce. At present, local authorities have only a negative incentive to work effectively in this area: lower unemployment will penalise them in allocation of the needs-based formula. The Dutch approach, with its ability for municipalities to keep savings, offers an interesting model of incentives for success.

101 Shakespeare (2008)

102 Gash, Hallsworth, Ismail, and Paun (2008)

103 Michael Bichard, ‘Capability Reviews’ in Grace (ed.) (2007), pp. 63-64; Milton (2007), p. 9

The implication of this for local authorities is a willingness to work together on a sub-regional basis, combining workable economic areas with a manageable structure from the point of view of the centre. (This is likely to apply particularly to strategic and economic development issues; for many services, partnership is more often at the individual authority/LAA level). There is an obvious similarity with the French EPCIs, though English sub-regional partnerships would bring together larger areas. However, as with the French experience there would be a price to be paid in murkier lines of public accountability.

As regards reorganisation, it has been part of the landscape in much if not all of our peer group. However, it is striking that

the justification for it has been to create authorities to whom responsibilities could be devolved. In theory this was sometimes the case in England too; it was one of the rationales for the proposals of the Redcliffe-Maud Commission. In practice, it has gone in step with the stripping of responsibilities from local authorities, and with reorganisations that have been seen as partisan measures.

Key features of any future reorganisation would be the involvement of local government itself in key aspects of the process (as in Denmark), and the effective operation of an independent commission. Perhaps the key lesson, however, is that reorganisation would be a very different process within the different central-local relationship that we have already proposed.

Conclusion

If our study of our peer group has told us anything, it is that there is no localist Arcadia and that many of the problems confronted by local government are familiar across jurisdictions. Higher tiers can and do intervene, pushing functions that they think important at the expense of local choices. Functions can be passed down without the matching financing. Reorganisations can and do take place. The existing funding base is not always adequate for the pressures that local government faces.

That said, it is also clear that the English system has distinctive features, many of them inimical to effective local democracy. The comparison with the peer group highlights: English local government's lack either of constitutional protection or of a full place at the national political table; its narrow and inflexible financial base; and the scale of the performance management regime to which it is subject.

The peer group also helps us understand how we got to where we are. Some of it reflects the informality of our arrangements. It has long been argued that the golden age of English local government in the late nineteenth and early twentieth centuries reflected a distinction between the “high politics” – Empire, foreign policy, major economic decisions – in which Westminster and Whitehall interested themselves, and the “low politics” of daily public services that they left to local government.¹⁰⁴

This meant that the freedom of local government was not underwritten by any constitutional guarantees. But nor has there been the intertwining of the central and local state and its politicians seen in France, exemplified in the *cumul des mandats*. There have been those who have made noted careers in local government and have then gone on to the national

level: Herbert Morrison, Joseph and Neville Chamberlain. Overall, however, national leaders – whether politicians or civil servants – have seen their local counterparts as a prosaic breed apart: “hewers of wood, drawers of water.”¹⁰⁵ So long as central government had a limited interest in “low politics”, this did not matter greatly; however, as national government has focused in more on domestic issues and on public service “delivery”, local government has had few defences.

In addition, England's institutional arrangements make it something of an odd half-way house. It is not a federal state, nor does it have an elected tier of sub-national government on a scale that can give the centre a manageable number of interlocutors. Federations are not always good for local (as opposed to sub-national) government, but they can nonetheless limit central government. In addition, sub-national tiers often take on large-scale public services such as education.

England is also a half-way house in service delivery and its financing. Its local authorities have quite a wide service remit, yet a limited and inflexible financial base. They also combine what are truly local services with those that are inevitably part of the national political debate, notably education, and to some extent social services. This, it is argued, forces an “upwards accountability” regime.¹⁰⁶ Local government will have to live with the fact that in these areas central interest and intervention will, even as part of a lighter regulatory regime, remain relatively strong. In other words, there should be as clear as possible a separation between local government's role as a deliverer and co-ordinator of certain national priorities, particularly in large-scale public services, from that of its role as local “place-shaper” which should be as free as possible from central

104 The argument was put in Bulpitt (1983)

105 David Walker, ‘CPA vs. capability reviews – half-time score card’, in Grace (ed.) (2007) p. 59-62

106 McKinlay, in Grace (ed.), pp. 68-9

direction. To some extent, this would mimic the “dual role” played by local authorities in members of our peer group such as Germany.¹⁰⁷

The drawback to sketching out the structural features of a system is that it can imply that nothing can change – “path dependency”, in the academic jargon. Admittedly, the example of France shows that the past can indeed have a significant influence: if it was a less crudely centralised country than it appeared to be before 1982, the decentralisation since then has been less than is often believed. However, there is no need for fatalism; political will can generate changes, even if the past will have some influence on the path taken. Whatever the detailed reservations and qualifications, France has changed significantly since 1982.

There is the opportunity for that political will to be exercised in England now. Across the party divisions, national politicians recognise the drawbacks of the centralisation that England has experienced. So far, however, steps to correct it have been halting and tentative. The recommendations in this report – many of them quite incremental when taken alone, and all realistic in terms of our political culture – would, taken together, represent a decisive change.

1. There should be a parliamentary resolution to entrench the role of local government. The resolution could draw on concepts (and sometimes, but not always, wording) from both the European Charter of Local self-Government and last year’s Central-Local Concordat. Critically, it would need to go further than did the Concordat with respect to funding issues, drawing on the Charter’s recognition for “diversified and buoyant” sources of local government finance. It would be for the CLG Select Committee to monitor compliance with the resolution.
2. Local government should be represented in a reformed Upper House, providing indirectly elected members alongside the directly elected members for the large constituencies to be used for the Upper House. This adopts elements of the model used by the Spanish *Senado*, although there would need to be a stronger reporting relationship to councils.
3. Legislation that would put extra burdens on local authorities, or makes major changes to the status of local government, should be subject to special procedures (including committees of both Houses), as are applied to Deregulation measures. Local government leaders should have the right to speak in this committee, a modest echo of the role of organised local government in the South African upper house.
4. Local government needs more diverse and buoyant revenue streams. This reinforces the case for the LGA’s “combination option”, giving local government access to a reformed council tax, relocalised business rates and some element of income tax. For both business rates and income tax, assignment of part of the tax take could be a starting point, with scope for local variation in the longer term.
5. The “new burdens” procedure should be replaced with a scheme modeled on the Danish “Extended Total Balance Principle”; key features of this are to allow for adjustments to compensatory grants if the outcome is significantly different from forecast, and to make local government a full negotiating partner with spending ministries.
6. The Australian Commonwealth Grants Commission should be used as a model for an independent body supporting a more transparent grant and redistribution system in England.

¹⁰⁷ For some thoughts on this separation, see Stoker and Travers (2001)

7. The more directive aspects of performance management should be reduced further. The national indicator set should be pared back, and Local Area Agreements should reflect more truly local priorities.
8. In addition, the transfer of key functions in skills, employment, infrastructure

and economic development from quangos and agencies to local government should go significantly beyond what is currently envisaged. Where national agencies continue to be active, they should be able to engage more fully with local priorities.

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How is it that England, which once considered local self-government part of its identity, is widely seen as one of the most centralised modern democracies?

This report compares the English central-local balance with that in a number of European and Commonwealth countries. It examines issues ranging from finance and performance management to constitutional protection. In drawing on this international experience, it shows how we got to our present situation and proposes measures to change it.



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