Principles

1. Are there common principles underlying the distribution and exercise of power in countries with multi-level governance systems?

Much of the literature on multi-level governance focuses on the variations rather than the similarities. We can distinguish between formal rules and de facto arrangements, between formal federations and regionalised unitary states. Typically, though, they have in common arrangements about self rule, in which constituent units have authority to government exclusively or in a shared capacity in different sections – such as education, health or transport – and shared rule, in which the different parts of the whole have a say in the running of things in the centre. When we measure the extent to which a system is multi-level or not we are typically measuring the extent of self and shared rule.

With respect to principles they typically surface in two types of documents, either in constitutions or in the documents proposing reforms (eg Consultative Steering Group, Silk report and, in Canada, the Meech Lake Accord or Charlottetown Accord). Occasionally such principles appear in legislation, such as the Social Union Framework in Canada (1999).

They include

a) recognition of **diversity**, existence of constituent communities – whether these are the units of the federation (as in German or Swiss constitutions) or linguistic or ethnic communities (as in the Belgian constitution). This often refers to a recognition of distinctiveness but also the equality of different groups. Self-government for constituent units, communities or Aboriginal peoples surfaces as well

b) **unity** and social solidarity – this could either refer to one nation or one people forming the demos or the common purpose of all within the state (eg Italy united by labour, US one nation united under God)

c) **equality** – this is often just included as equality before law but also includes equal opportunity and is therefore tied to **mobility** rights. Citizens should have equal access to services wherever they live. This takes on particular significance when there are recognised linguistic communities so that one constituent unit is not perceived to be a ghetto from which state citizens cannot move.

2. Is the principle of ‘comity’ and mutual trust useful in federal or other multi-level constitutions? How is it enforced?

- Do you have any views how a principle of comity might be enforced in dealings between governments in the UK?
The notion of a federal harm principle is appealing, and presumably this was behind the non detriment clause in Smith but it seems difficult to enforce. Evidence that it is difficult to enforce is seen in the race to the bottom over welfare provision in the United States. States cannot enforce a sense of trust or solidarity. Related issues concern perceived unfair treatment of jurisdictions or constituent units and perceived unfair treatment of citizens. Federalism implies different decisions will be reached in different jurisdictions and those different decisions might well just be diverse forms of implementation but they might also lead to higher and lower levels of service. If you provide a unit with authority to create tax bands and levels then individuals will inevitably be treated differently. There is an important distinction, however, between different treatment and unfair treatment. Requiring someone to have a regionally provided health card to receive service and not treating someone without one, or not treating someone who has moved recently from one constituent unit to another, could be perceived to be unfair treatment.

It is impossible to enforce sentiments such as trust, but you can develop a system of adjudication to resolve disputes between constituent units or between units and the centre and can underline the importance of a common goal. Much of this works on the basis of common will to be together.

Asymmetry and England

3. Do any other devolved/federal states have significant sub-state regions or nations without devolved powers? Are there any comparable examples to England?

Where asymmetry exists, the norm is for a majority of regions to have a base level of autonomy, with a smaller number to have enhanced self or shared rule (usually self rule). Sometimes these are particular regions within the territory of the state (eg Spain, Italy) or sometimes they are overseas territories, or protectorates as is the case with Greenland, or the Aland Islands

Only in a handful of cases is there a majority of regions with a base level of autonomy with a smaller number enjoying lower levels of self or shared rule (eg city regions Ceuta and Melilla in Spain). For our purposes the closest corollary would be the Canadian and Australian territories whose constitutional status is different from Canadian provinces or Australian states. Canadian territories in some sense are provinces writ small (with smaller populations and restricted legislative competence) but there are three further differences:

- Sovereignty of provinces derives from the Constitution Act but territories are created by federal statute and cannot amend their constituting documents. They could, in theory, be disbanded or have boundaries altered by federal acts
- Formal sovereignty extends to all territorial legislation, so any piece of legislation could also be overruled by the federal government.
- Territories have lower levels of fiscal autonomy. They do not have control over management of Crown lands. They can collect income tax but the diseconomies of scale ensure that the bulk of their funding comes from block grants.

- Can administrative devolution to regions or nations substitute effectively for legislative devolution?

There is a distinction between whether it can work in principle and whether it would be helpful in the UK. In a UK context I would have thought that administrative devolution would be perceived to provide insufficient democratic expression to the will of a particular people. The campaign for devolution in 1997 (indeed from 1979 to 1997) hinged on the inadequacy of administrative devolution as a mechanism for reflecting the democratic will of a people. The introduction of significant administrative devolution to England would likely be interpreted as an interim step towards democratic devolution since this is how it has worked elsewhere in the UK.

4. Are there other countries which have a significant asymmetry of powers between regions? Does this cause problems in other countries?

Yes, there are variations in powers, although the extent to which they are significant is debatable. The asymmetries are often for exceptions but they are often in the direction of having more autonomy than is ‘normal’ within a state (eg Greeland within an otherwise unitary Denmark). With respect to problems, it is worth asking problems for whom? Problems for governments – in that they don’t have an equal say in the affairs of the state – or problems for individuals, who are treated differently because they live in a jurisdiction with more or fewer powers?

Furthermore, if there are problems one would need to determine whether it is the institutional asymmetry itself or the underlying diversity that made asymmetry appealing that is causing problems. If the Canadian federation is perceived to be dysfunctional is it because of the asymmetry afforded to Quebec or the pre-existing cultural and linguistic variation within the state that is causing difficulties?

It is also useful to distinguish between different forms of asymmetry to determine why problems arise. De jure asymmetry establishes different legislative authority formally (eg in constitutions) while de facto asymmetry occurs when only certain regions avail themselves of possible powers.

One example of de facto asymmetry is the existence of provincial opt outs from federal programmes in Canada. The federal government legislates at times in areas of exclusive provincial jurisdiction. Until 1949, any province opting out of a federal programme in a provincial area of jurisdiction would have paid for it through taxes
but surrendered any benefits from it and, if they erected an equivalent programme, would have borne the full costs of creating their own programme. At this time Quebec did not accept federal funding for highways, universities, hospital insurance, or language training for immigrants. One estimate is that the province was giving up roughly twice as much as it was accepting (82 to 46 mill) in federal spending. In the early 1960s, amid expectations that the federal government would compensate provinces who opted out, Quebec then joined a series of jointly funded programmes. In 1964 the federal government created an opt out formula, with financial compensation for opting out of standing shared cost programmes (including pensions, disability and welfare payments) and so Quebec withdrew from 30 programmes. Critically, each province was offered this right, but typically only Quebec exercised it. There are criticisms from both sides:

- that if the federal government cannot count on economies of scale then it becomes more expensive to administer programme to remaining provinces,
- that there are thresholds of participation for programmes to continue,
- that arrangements are approved on a series of rolling agreements every 5 years which introduces the prospect of instability,
- that provinces operating their own programmes need to offer similar provision to that offered by the Canadian government (which effectively means provinces retain the autonomy through administration rather than by establishing the guiding principles of such programmes)
- that the federal government can cancel joint programmes without notice and if provinces wish to continue they must bear the full costs of doing so

The 1982 Constitution Act allows provinces to opt out of constitutional amendments transferring powers from provinces to the federal government. Provinces would receive financial compensation only if it relates to education or culture. If it relates to anything else then provinces bear the costs if they wish to implement a similar programme. Up to 3 provinces can opt out so long as they have less than 50% of the Canadian population. Both the Meech Lake and Charlottetown Accords sought to extend financial compensation and preserve provincial autonomy with no financial detriment.

The other form of asymmetry in a policy area relates to immigration, where provincial control was offered to Quebec but not to any other province. This has prompted calls from Ontario – which receives a large proportion of Canadian immigrants – to exercise similar control. The New Democratic Party (NDP) in the recent federal election campaign offered to Quebec a right to opt out of any policy and to receive compensation for it, with no conditions. Such an opportunity was not offered to any other province. Of the two forms, this form of asymmetry is perceived by other provinces to be far more problematic (although preferred in Quebec).
There are other forms of asymmetry that reflect diversity. Official bilingualism and bijuridicism are two examples but they also feed other asymmetries, most notably in the proportion of Canadian Supreme Court Justices from Quebec (3/9).

Last, asymmetry does tend to lead to catch up federalism, so it is perceived to be a less stable and enduring settlement.

5. What do overseas examples tell us about how new sub-state regions for devolution or federalism are created? What lessons might the UK learn?

With respect to new sub-state regions, the Canadian example is useful because it has asymmetry at its heart. Only four provinces entered confederation in 1867. All had previously enjoyed some form of self-government. The rump was referred to as the Northwest Territories and it was from this mass that subsequent jurisdictions were created (Manitoba in 1870, the short-lived Keewatin territory in 1867, the Yukon Territory in 1898, and the provinces of Alberta and Saskatchewan in 1905). The original boundaries of provinces altered: in the case of Quebec they were extended in 1905 and again in 1912. At the time the distinction between whether something was a territory or a province was a function of population size and concentration, the balance of settler population to indigenous peoples and whether any legislative council had been in operation. Territories had fewer people and, critically, fewer settlers, and no previous institutions of self-government. The two forms set jurisdictions on different trajectories and there is no history of territories becoming provinces (although parts of territories have been integrated into provinces). The primary purpose of creating territories was to identify sections that were manageable to govern (nothing too big) while the primary purpose of creating provinces was to provide effective self-government for the settler population.

These are two different paths and one needs to determine which is primarily animating a desire to resolve the governance of England. If it is self-government, then an England wide solution is best. If it is to create territories of a manageable size, then regional solutions within England would be appropriate. Four rounds of the Future of England Survey and various other studies have shown consistently that England-wide solutions are preferred, particularly among those who are the most disenchanted with current arrangements.

With respect to federalism, we have obviously three situations: states that are federal from the moment of their inception, states that have witnessed transitions to federalism and states with levels of regionalism that are perceived to be quasi federal by some but not others. This last proves rather tricky as it leaves room for different interpretations by residents in different parts of the state. In all three forms of federal states do we find constituent units with historic boundaries as well as constituent units that are more administrative creations (eg Catalonia, Bavaria, Bretagne vs some of the more recent NUTS regions).

Reservation and devolution of power
6. How is the idea of ‘social union’ reflected in the distribution of powers and resources in other countries?

- How far can welfare/social provision vary between sub-state regions and nations without undermining social solidarity or the overall integrity of a state?

There are different forms of unions, including social, economic (trade, and currency), political and legal. In terms of variation and solidarity, two things worth noting:

First, feeling a greater sense of regional identity is related to a greater sense of regional solidarity but that is not universally related to lower levels of state-wide solidarity (See Henderson, Jeffery and Wincott, Eds, *Citizenship After the Nation State*). True, it often works that way in historic nations such as Scotland, Catalonia, Wales, and Quebec, but even in those states where it occurs in some regions it doesn’t necessarily work that way in others: for every Quebec or Catalonia there is an Ontario or a Madrid.

Second, federalism and various forms of multi-level governance have at their heart the right of regions or constituent units to make their own decisions about certain areas of jurisdiction. It necessarily follows that some of those decisions will be different. The possibility of variation is an inherent and fundamental part of autonomy. But there are three caveats to this:

a) In a UK context we know that people want regional governments to decide things and have policy control but there is an overwhelming preference for policy uniformity (and for those who want variation they want higher benefits and lower taxes)

b) There are ways of softening this, with central governments setting minimum standards or general principles, with constituent units left to deal with the details. This minimizes variation but it also infringes on the legislative competence of constituent units

c) We tend not to find wild variations in policy provision. Fundamentally units are working in the same economic climate. This is not to say there are not exceptions to this. We can find examples of large deviations in income tax and rates of sales tax, as well as access to state-subsidized childcare but comparative studies of policy provision in Canada often find less variation than we might expect
7. Which powers need to be reserved to maintain an effective state/union?
   - Do these go beyond defence, security and macro-economic policy, to include welfare or taxation?

Effective in whose eyes? Effective for voters not to wish to dissolve the union? Identifying policy areas must follow rather than precede a discussion of what makes an effective state and, specifically, what makes an effective British state. Much of the literature refers to social solidarity as a glue that binds citizens together. As a result, any proactive effort to stem centripetal forces would need to identify whether reserved legislative competence extends to those policy areas likely to foster and reflect social solidarity.

8. Is there a successful precedent for setting out powers that may be devolved and allowing sub-state nations or regions to apply for those powers when they are wanted?

Spain offers an example of this. The Canadian example offers the reverse, a range of federal programs from which provinces can opt out. Whether they are perceived to be successful precedents is largely a matter of interpretation (as response to question 4 suggests)

Accommodating devolution at the centre

9. How do the institutions of the central state accommodate the sharing of powers between the state and sub-state nations or regions?
   - Do central governments have senior ministers responsible for the maintenance of the relations between sub-state governments, and the wider health of the union?

This addresses shared rule rather than shared jurisdiction as such. There are both informal and formal mechanisms of shared rule and we can also distinguish between intragovernmental and intergovernmental relations. With intragovernmental relations, constituent parts of the state participate in central decision making through their representation in central institutions of decision making. This can occur through informal quotas for cabinet positions for different regions, or in the formal distribution of seats in an upper house to the constituent units of the state. Intergovernmental relations occurs when the central government and the governments of the constituent units meet to discuss shared goals. This could include the heads of government (Prime Ministers and Premiers in the Canadian context) or specific ministerial portfolios. Both, rather than one or the other, are typically employed.
10. How important is it for states to foster a sense of national, rather than regional, identity? Which other countries offer successful and unsuccessful examples of this?

Very important, for without it the state will fail but it need not be zero sum. The issue in Quebec is not that voters have considerably higher levels of national attachment to Quebec but that their attachment to Canada is so much lower than in other provinces. It is this lack of attachment to the state – and to other Canadians – that relates to support for independence and such attachment is a difficult thing to reverse engineer. There are two obvious examples of attempts to foster it.

First, we can see efforts to bind citizens together through the use of symbols. Symbols include flags and buildings but also, arguably, constitutions. Following the 1995 Quebec referendum the Canadian government struggled with this. It pursued three initiatives with varying degrees of success:

- **Flags.** This included a commitment to distribute one million flags to ordinary Canadians and was motivated by a sense that the appearance of ordinary Canadians expressing pride in their country would make Quebecers think twice about leaving. The programme was expensive, was seen by citizens as a waste of public money and had no discernible effect on attachment to Canada within Quebec (nor on already high levels of attachment to Canada outside Quebec).

- **Canada Information Offices.** These offices were akin to those established abroad to teach resident in other states about Canada as a site of migration or investment. Following the referendum CIOs also opened in Ottawa with the primary purpose of educating Canadians about Canada. This is the same vein as various activities of the Canadian Heritage ministry, including televised “heritage minutes” covering events in Canadian history designed to emphasise a shared past and common values.

- **Federal branding.** The sponsorship programme was designed to brand federal infrastructure spending projects, particularly in Quebec. The programme was criticised by those who felt that using public funds to advertise the Canadian government to Quebecers was akin to campaigning in a referendum that had not been called, and was an unfair use of federal government spending power. Worse was that the programme was plagued by financial irregularities. When we look at patterns of support for independence in Quebec it is generally a story of long decline since 1995. The exception is the period when the sponsorship scandal broke and it is widely seen as one of the contributing factors to the defeat of the federal Liberal government in 2006.

Second, we can compare this to federal government efforts to emphasise shared values. We see this periodically, most often when values are perceived to be under
threat. We see values emphasised formally in two ways: in constitutions and in citizenship tests for new immigrants. It is worth distinguishing between values of substance and values of process. We all believe x (eg we all believe in God, we are all Lutherans) appears frequently in constitutions and in citizenship tests (we believe in gender equality, in same sex marriage, in the legalisation of marijuana). These efforts to instil shared values are arguably less successful for they suggest there is only one way to be a citizen or a member of the demos. It is partly this effort to emphasize shared values that is behind claims that Scots are meritocratic, left of centre, social democrats. Such claims risk alienating those who fail to share such values (and this ignores for the moment that the myth of marked differences in values across the UK isn’t actually true). We can juxtapose this with efforts to emphasise what we might refer to as values of process, which provide a sense of the functioning of the state and the interaction of people. Multiculturalism, or the vision of the state as a melting pot, are process values for they provide a sense of how citizens navigate their role as citizens, including how to interact with fellow citizens and the state. Without question UK citizens share substantive values, in the sense that we can discern clear majority preferences, but it is not always clear what specifically ‘British’ values (rather than Western European or northern European or liberal values) would be. One of the most obvious examples of a process value would be a British sense of fair play but it would be difficult to discern how this has been applied to the constitution or to argue that this is the motivating value behind constitutional reform. Arguably this is what the UK lacks, not a creation myth but a value driven exposition of how we’re all supposed to work together and what kind of (political) society we aim to be.

11. Do citizens of other states understand their constitutional structures and the sharing of powers among different state institutions?

- To what extent do you believe it is useful for states to have a documents clearly setting out their constitutional structures?

In general, no. Much of the evidence from the voting literature is that individuals can’t correctly attribute jurisdictional authority which means they can’t punish or reward the correct governments for their respective successes or failures. There are three caveats to this.

First, there are exceptions, where people generate split level citizenship, with different levels of trust and efficacy for different levels of government based on knowledge of different areas of jurisdiction, and different assessments of performance. For the most part this occurs in historic nations or locations where regions have a particular salience as political communities (eg they possess their own language, own political parties, enjoy high levels of institutional completeness, and control of agents of socialisation) but even then levels of knowledge are not high.

Second, there is a spectrum of preferences for jurisdictional control ranging from defence, which almost everyone thinks should be the responsibility of the state, to
education, which almost everyone believes should be the responsibility of the region. I say this on the basis of a large European survey we conducted across 14 regions in 5 states but this is reinforced in various other single state surveys. Knowledge, typically, matches preferences: it is better at the poles but hazier on policy areas where preferences over legislative competence are more mixed. In Scotland, we also know that voters are generally better at identifying reserved areas than they are at correctly identifying devolved areas of jurisdiction.

Third, we saw evidence of policy learning and improved knowledge over the course of independence referendum campaign. This as a direct result of long campaign. The speed of proposed changes post-referendum means that knowledge of proposed changes is low, and that attitudes are often contradictory and malleable.
12. How did Canada get past the period of constitutional crisis and referendums on Quebec’s secession?

There are two different trajectories here, one after the 1980 referendum and a rather different one after the 1995 referendum. During the 1980 referendum campaign Prime Minister Pierre Trudeau indicated that he understood that a No vote was a vote for some form of change and accommodation of Quebec. The specifics were not made clear and as a result voters would have had different expectations of what form that institutional change might take. The result was the patriation of the Constitution and a Charter of Rights and Freedoms both the process of which and the substance of which were perceived to be troubling to politicians in Quebec. On substance, the Charter of Rights was perceived to be more individualistic than the Quebec Bill of Rights and the proposed amending formula denied Quebec a veto. On process, the changes were made without the unanimous consent of the provinces. The constitutional debates of the 1980s and 1990s were an effort to correct what was perceived by the Canadian government to have been a missed opportunity.

The Meech Lake Accord was an elite negotiated deal that had to be approved by premiers and failed. The Charlottetown Accord was an elite negotiated deal that was then put to the electorate in two referendums held simultaneously (one organised by the DGE in Quebec and another organised by Elections Canada in the rest of Canada). The failure of the Meech Lake and Charlottetown Accords therefore did not address Quebec concerns about the process and substance of patriation nor did they address the long standing wish for formal recognition of Quebec as a nation/distinct society and the result was a call for a referendum on sovereignty partnership in 1995.

There are obvious parallels between the Scottish referendum and the 1980 referendum. Indeed the reaction to the 2014 Scottish referendum appears as an accelerated example of 1980, with quick offers of constitutional reform and suggested proposals make clear to voters less than six months after the referendum (compared to two years later in the case of Quebec).

What is actually being offered in Scotland and recent proposals for English Votes for English Laws is more similar to the Charlottetown Accord as it invokes not just bilateral reform but multilateral reform of the UK. The mass arrival of BQ MPs in Ottawa occurred during the 1993 election, 13 years after the 1980 referendum but in the UK the marked increase in support for the SNP occurred in May 2015, only nine months after the referendum.

The most obvious distinction is that the constitutional debates in the 1980s and 1990s in Canada offered a state-wide examination of the structures and operating principles of the entire state, whereas in the UK it appears to be pursuing an issue-by-issue bilateral approach, with seemingly disconnected discussions occurring in Edinburgh and Cardiff about the future of the devolution settlement.
For those opposed to independence, the trajectory after 1980 - which inevitably led to the 1993 referendum - is perhaps one to avoid. For those who support independence, the trajectory after 1995 is perhaps one to avoid.

Figure 1: Support for Independence, annually since 1989

After the 1995 referendum sovereigntist politicians said they would not press for a third referendum without three winning conditions. These included a popular and credible leader, favourable economic conditions and a clear lead in the polls. With the brief exception of 2002-2004, that lead in the polls never materialised. The declining support for independence can be attributed to international and Canadian factors as well as to internal Quebec dynamics and forces.

Within Quebec, partisan debate moved to the right. Party competition is structured by two axes, one left-right, one on constitutional matters. The Parti Québécois (PQ), which previously had been the only sovereignist party, was joined in the early 1990s by the ADQ and later (in 2012) the Coalition Avenir Québec (CAQ). There were now more voices expressing a desire for sovereignty but from different economic perspectives and this sparked divisions within the PQ, particularly on economic policy. In addition, the PQ, whose leader typically served as the de facto head of the sovereignist movement, failed to elect leaders whose popularity and economic credibility matched that of former leaders Jacques Parizeau and Lucien Bouchard.
In addition, both PQ and Liberal governments in Quebec continued to take advantage of the autonomy available to them, including federal opt outs. Under PQ Premier Pauline Marois the PQ government referred to this as sovereignist governance and pursued higher taxes and debt reduction, as well as development of natural resources in the provincial north. The PQ government sought to maximize the use of powers available to it, and indeed operated as if it had the powers to pursue its own policy agendas in an independent state. For a while the party proposed holding sectoral referendums as a way to get around federal legislation governing sovereignty referendums. This reflected a desire to make the most of existing autonomy.

Last, this coincided with an increased salience of anti-immigration sentiment and criticism of inter-culturalism in Quebec. As a result Quebec nationalism has appeared less social democratic and less civic in its ideals that was the case before 1990.

The federal government reaction to the referendum was the Clarity Act, which affirms the right of provinces to hold referendums on any topic of their choosing but sets clear guidelines on the use of sovereignty referendums. The Act requires a clear question referring to separation without reference to other forms of sovereignty, insists on (but does not define) the need for a clear majority and suggests that a clear majority agreeing to a clear question would invoke the constitutional amending formula, which would then involve all provinces. While this establishes clear steps by which a province can secede – which in itself is unusual – the bar to provincial secession appears high. This, the economic crisis and continued continental integration have dampened support for sovereignty, particularly among younger voters.

**Figure 2: Support for Independence and Parti Québécois**
While there are general trends in support we can see peaks and troughs and a growing divergence between support for Quebec sovereignty – which remains around 33% – and support for sovereignist parties. If we look at trends in support for Yes and support for the PQ, they are diverging from May 2000 and while they track similar routes PQ support lags Yes support, and lags it by a considerable margin. Obviously independence is a binary option, whereas PQ support is in a multi-party environment (ADQ and then CAQ as of 2012, QS).

What explains the various peaks and troughs in support? The behaviour of the different levels of government clearly matter. The federal sponsorship scandal is associated with an increase in support for sovereignty and so too is the presence of a Liberal government in Quebec. Support decreases when a popular PQ leader resigns (Bouchard, Landry) and rises with a less popular leader (Boisclair) resigns. This reinforces the importance of leadership to the sovereignty movement.