

The World Will Be Your Oyster?

Reflections on The Localism Act 2011

Chapter Twelve

March 2012

Reflections on the Localism Act
George Jones and John Stewart

Reflections on the Localism Act

-12-

George Jones and John Stewart

While the Localism Act contains a limited number of proposals that sustain localism it has serious weaknesses as an expression of localism. The main defect is that the Government's approach does not recognise that the main barriers to the development of localism lie in central government itself and that localism will not develop its potential unless there is fundamental change in the working of central government. Those barriers are reflected and reinforced in the Act because its development has been conditioned by the dominant centralist culture of central government with the result that the Bill could as well have been called the Centralism Act.

A further significant weakness of the Act is that the Government's policies involve both decentralisation to local authorities and decentralisation to local communities and citizens, but it has failed to clarify the relationship between these two approaches, with the danger that the latter undermines the former.

Localism and centralism in the Act

Some sections in the Act give expression to localism and decentralisation to local authorities, but they are set within a framework that remains centralist, an almost inevitable result of a system of central government dominated by the culture of centralism. Examples of localism include the proposed general power of competence, which we hope will overcome the restrictions placed by the courts on the powers of well-being. The provisions placing the responsibility for maintaining standards of conduct on local authorities rather than on the external Standards Board show confidence in local authorities and localism. Centralism is directly challenged by the repeal of the elaborate provisions in the Local Democracy, Economic Development and Construction Act 2009, specifying in great detail how local authorities should deal with petitions, a classic example of centralism, which assumed that those in central government, who did not have to deal with local petitions, knew better how to deal with them than those who have to deal with them in practice.

the electorate have to sign a petition to secure one. Leicester was originally included as a twelfth authority but the council adopted the elected-mayor model without a

referendum. This centralist provision sits uneasily with the localist one allowing authorities to reintroduce the committee system. Generally there is no suggestion that the plethora of regulations and guidance on political While there are other examples of localism in the Act, centralism is more powerful. The Secretary of State will decide whether the expenditure proposed by an authority is excessive and a local referendum is held. The Secretary of State has decided that eleven large cities must hold referendums on elected mayors even though their councils have not decided to hold one, and their citizens have not sought one even though only 5% of structures will be eliminated or even significantly reduced. Alteration of a local authority's internal political structures is even excluded from the general power of competence. One would expect a competent authority to be able to determine its own internal political arrangements.

Local authorities must consider whether an expression of interest by a community group, in providing one or more of its services, would promote or improve social, economic and environmental well-being. But it can be rejected only on grounds to be specified by the Secretary of State by regulation. Centralism trumps Localism..

The Secretary of State will define community value in the bureaucratic procedures proposed for local authorities in compiling lists of local assets of community value, although what is of community value should be a matter to be determined locally rather than at the centre.

These examples are only a few of the powers being given to the Secretary of State. The Act contains provisions for over 100 orders and regulations in addition to the 483 pages in the Act with its 223 clauses and 34 schedules. We foresee the Act being accompanied by panoply of regulations and orders, as well as by almost endless pages of guidance, as the centre seeks to determine what should be done locally, rather than the local authority which knows local conditions and is accountable locally. It is ironic that a Localism Act contains so many means by which central government can prescribe how local authority powers are to be used, their procedures developed and criteria to be applied by them.

It is as if central government's instinctive response is to act through command and control enforcing detailed prescription. Yet localism will develop only if centralism in the culture and processes of central government is effectively challenged. The Act shows that, far from being so challenged, these attitudes and practices have deeply influenced the so-called Localism Act.

We had hoped that in the parliamentary process the powers to make regulations and orders would be largely eliminated, making the Bill into a real Localism Act. The number was reduced from 142 but over 100 remain. A few centralist proposals were cut out. The provisions for the Secretary of State to appoint shadow mayors before the referendum, and the provisions requiring new mayors to propose to the council they should act as chief executives, have been

removed. The excision of all the clauses governing petitions for referendums does not prevent such petitions but does take out the powers proposed for the Secretary of State to determine the criteria for decisions by local councils as to whether to hold the referendum. These changes were necessary because their implication had not been fully thought out and the debates exposed the problems they would create.

A challenge to centralism

Centralism pervades central government in forming its attitudes and determining its procedures and practices. It draws strength from the culture of the various departments of central government, which do not trust local authorities to run their own affairs and know no other way to deal with them than through regulation and detailed guidance designed to ensure they act in ways determined by the centre. Departmental attitudes are reinforced by ministers who have their own views as to how local authorities should act and wish to require them to act in that way. There are plenty of examples even in the Department of Communities and Local Government which sponsored the Act. Its Secretary of State has introduced what is in effect a new specific grant for weekly collection of domestic waste, even though he has argued specific grants are inconsistent with localism. He has required all authorities to publish details of any expenditure over £500. He asserted that all authorities should approve senior pay policy statements and therefore he saw it as right to require them to do so in the Localism Bill, later amended in the Act to require the approval of general pay policy statements with special attention to the policies governing the remuneration of chief officers. These duties may be sensible for local authorities, but it should be for them to decide, as localism suggests. The centralism implicit in the accepted ministerial role is well illustrated by the letter sent by Bob Neill, a junior CLG minister, to all Leaders informing them they should provide an effective refuse collection even in difficult circumstances, as if they did not already know that and many of them were being successful in doing so. Ministers believe they must act even when localism means matters should be left to local authorities to deal with. One suspects that at times localism is seen by both ministers and departments as giving freedom to local authorities to do what central government wants.

Past experience suggests that ministerial words calling for localism do not translate into localism in practice because of the dominance of centralism in central government. Michael Heseltine, the Secretary of State in 1979, announced a bonfire of 300 controls, but the centralist culture remained unchallenged and over time new controls were introduced, more than replacing those abolished. The Labour government often set out policies for decentralization to local authorities but the reality was detailed control in targets, inspection, prescriptions and guidance. There is no better illustration of this approach than the at least twelve regulations, five directions and nearly two hundred pages of guidance specifying exactly how local authorities should

introduce new political structures, virtually all of which will remain in force after the Localism Act.

The Bill shows centralism is a powerful influence even in the Department of Communities and Local Government. In other departments the culture of centralism is even stronger. Unless challenged this culture of centralism will prevent localism becoming more than words from a Minister or in a White Paper as has happened in the past. If the Government wants, as it asserts, to see localism developed in practice, it must recognise the need for changes in the attitudes and practices of the departments of central government. Words by themselves will not be sufficient. Measures are required to entrench localism.

We have given evidence to three select-committee inquiries arguing for changes to bring about a new pattern of central-local relations through a semi-constitutional statute giving statutory expression to the principles of localism. Whitehall departments recognise statutes more readily than words that carry no legal weight.

A statute is not enough to secure change. Procedures for monitoring and enforcement are needed. There should be a unit in the very centre of government – probably in the Cabinet Office - to monitor the operation of the principles set out in the statute, ensuring its application by departments. Even more important would be a joint committee of the two Houses of Parliament with responsibility for monitoring central-local relations in accordance with the principles, reporting to parliament both annually and on specific proposals. Similar recommendations were put forward by the CLG Select Committee in its 2009 report *The Balance of Power: Central and Local* but were neglected by the then government. The necessity for these proposals gains urgency from the need to ensure that the Government's commitment to localism informs the culture and practice of central government in all departments. Without such changes localism will remain a topic more spoken about than acted on. The weakness of the Government's approach to localism is that it has not recognised the need for a change in the centralism entrenched in the workings of central government itself.

Decentralisation to communities and to local authorities

As well as decentralisation to local authorities the Government's localism policies involve decentralisation to communities. The Government has not clarified the relationship between these two approaches to decentralization, although it appears it sees the relationship being determined by detailed regulation rather than by local authorities working with communities. Nick Boles, an influential Conservative MP, has recognized in his recent book *Which Way's Up?* the role of local authorities in working with communities, arguing "...local communities should be given the power and the freedom to take charge of their own destinies, and that, to do so, they need strong and independent local government,

representing the wishes of local people and trying out new ways of working that make life better for them..." (pages xviii –xix). He recognises that community empowerment requires strong local government and presumably not national control and regulations as in the Localism Act.

There are many issues to be faced in decentralization to communities. What is a community? Is decentralisation about only communities of place or does it include those of background, interest and need? What are the organizational and geographical boundaries of communities? Will there be gaps and overlaps between communities? If communities overlap, which will prevail on specific issues? What if more than one group claims to be the sole expression of the community? Is the community group genuinely representative of the community? How is openness in the governance of a community group given expression? How is the community group accountable to the community? How are financial accountability, legal requirements and probity ensured? How far should the community group be bound by the policies of the local authority? What is the role of the local authority in determining these issues?

Problems could arise if these issues are not resolved as decentralisation to communities develops. Unrepresentative community groups could arise, dominated by a few individuals and sectional interests, with little regard for the local public interest. There could be limited accountability of groups to local people. Early enthusiasm could be eroded by time. Individuals initially sustaining the group could leave the area. The requirements for open government could be ignored. Financial irregularities could occur, even financial scandals. Conflicts may arise between the local authority and community groups, unless the relationship is clear, close and productive of a shared understanding. While disagreements on individual issues are inevitable, the danger is they can lead to sustained controversy which could undermine not merely localism but the Government's aspirations of the Big Society.

The Government should face the issue of how decentralisation to communities relates to decentralisation to local authorities, and recognise this relationship cannot be dealt with by national regulations that control the relationship through national rules and procedures. The difficulties can be resolved only by placing responsibility for involving and empowering communities on local authorities that understand local communities and can work with them in resolving all the issues raised.

The local authority and communities are linked together in shared concerns for local areas. Local authorities can resolve these issues with community groups provided they act with enthusiasm seeing community involvement and empowerment as strengthening local government and local democracy. Only with a readiness by the local authority to work closely with communities can a balance can be found between the need for a flexible approach to community involvement and empowerment and local policies to ensure full representation of

and accountability to the community, financial and legal probity and an awareness of authority-wide policies. This balance is likely to be more easily achieved in working with parish councils in rural areas and urban equivalents, but there must be scope for other forms of community groups which can give expression to these same requirements.

A neglected essential element

There is a huge gap in the Act. A Localism Act that lived up to its name would have dealt with the financing of local government. Centralism will prevail as long as local authorities are so massively dependent for their resources on central government. They become supplicants for funding from central government rather than engaging in a dialogue with their citizens about local priorities. A genuine Localism Act would give legislative authority to the decentralisation of local taxation, so that local authorities draw the bulk of their resources from their own voters with taxes whose rates they determine.

Conclusion

The Government's policies for localism are to be welcomed in principle but should be criticised in practice. While the Act contains a limited number of proposals for localism, they are set in a centralist framework based on the attitudes and practices dominant in the workings of central government. Centralism dominates localism in the Act, and the need for change in central government is not even recognised. Rather, centralism is entrenched by the many new powers, regulations and orders.

In addition there is a lack of clarity as to the relationship between decentralisation to local authorities and decentralisation to communities that can be resolved only at local level rather than by nationally-imposed decisions embedded in regulations.

Much remains to be done to make localism a reality, especially decentralisation of local-government financing. Localism will not develop unless central government itself changes, yet there is no sign in the Act that such change is likely. It is drafted in a way that suggests the principle put forward by Nick Boles that decentralisation to communities depends on strong and independent local government has not even been recognised. Rather, the Act sees local-authority relations with communities as requiring detailed controls, which far from strengthening local government would weaken it. Central government apparently knows no other way to act in local affairs than through command and control expressed in regulation, guidance and detailed prescription. If localism is to develop, central government has to learn new ways.

UNIVERSITY OF
BIRMINGHAM

Institute of Local Government Studies
University of Birmingham
Edgbaston, Birmingham B15 2TT

www.birmingham.ac.uk/inlogov