

## The Localism Act 2011: Local Government Encounters the “Big Society”

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### *Abstract*

*Il Localism Act del 2011 è volto ad agevolare l'introduzione di riforme radicali del governo locale in Inghilterra, combinando le idee associate alla cosiddetta “Big Society” in una nuova importante iniziativa per il governo locale. I provvedimenti previsti dall'Act rischiano di minare l'autonomia istituzionale dei governi locali. L'articolo prosegue con una rassegna storica delle relazioni fra centro e periferia. Si passa poi ad esaminare la misura in cui l'idea della “Big Society” è stata impiegata per inquadrare la nuova legge. Benché sia prevista una devoluzione di poteri verso il basso, il quadro economico sottostante prevede forti tagli alla spesa pubblica e un incremento nella richiesta di servizi pubblici. L'articolo si conclude con una riflessione sul probabile impatto sulla democrazia locale dell'estensione del modello “sindaco e giunta” alle principali città inglesi.*

### *Introduction*

The Localism Act 2011 is intended to pave the way for radical reforms of local government in England by refining ideas associated with the so called “big society” into a major new initiative for local government in a number of distinct ways. The Act constitutes a substantial piece of legislation with many strands to it. It is intended to embody a radical strategy which responds to a crisis in local government reflected in voter apathy and low morale<sup>1</sup>. This article will concentrate on the likely impact on the core organisation and functioning of local government. It will be argued that the measures contained in this legisla-

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(1) The turnout in local elections has been low. For example it was 39% in the England and Wales local elections 2008 and 2009 but rose 62% in May 2010 coinciding with the general election – Factsheet, The Electoral Commission, October 2010.

tion threaten to further redefine the role of local government by undermining its institutional autonomy. From above central government has been granted additional powers to impose controls, and, at the same time, from below the radical shift towards a new form of subsidiarity threatens to undermine the concept of a uniform nationwide system of local democracy. The scene is set for the discussion that follows by an historical overview of central local government relations. The next task is to consider the extent to which the big society idea has been employed to frame the new Act. It will be observed that the concern to devolve power downwards is included as a core feature associated with the recognition of community rights and referendums to allow local interests to take over council services. The problem is that this initiative which threatens to progressively diminish the institutional importance of local government, including its capacity to perform existing functions, is being undertaken against an economic background of deep cuts in public expenditure amounting to a 27 per cent reduction in the government's local government budget and a 51 per cent cut in the communities budget over four years. Steadily increasing levels of unemployment are anticipated with a loss of 500,000 public sector jobs. In turn, higher levels of unemployment will almost certainly impact on social and welfare policy by adding to the demand for the public services in the hands of local councils. At the same time we will see that central government has not only failed to take the opportunity to confer greater financial autonomy to local councils but the Secretary of State has a new set of powers to reign in the expenditure of councils. In the final section we turn to consider the likely impact on local democracy of extending the mayor and executive model to the main English cities.

### *Central Local Relations: Forms of Accountability and Control*

The cumulative impact of twentieth-century developments in local government resulted in a disintegration of the constitutional tradition of municipalisation. Essentially, according to Loughlin, the reason for

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(2) M. Loughlin, *The Demise of Local Government*, in V. Bogdanor (ed) *The British Constitution in the Twentieth Century* (Oxford: OUP, 2003), 522.

the diminishing status was that local government has progressively lost its autonomy<sup>2</sup>. The origins of the modern system of local government can be traced back to the trends towards municipalisation begun in the nineteenth century and then carried over into the twentieth century during which local government had been required to provide many services with an imposition of national minimum standards in their provision. In an important sense a primary function of local government was as an agency to promote the delivery of public welfare and, as such, it had been granted a pivotal role as service provider under many different statutory provisions. The emphasis of central government from the 1980s shifted to finding ways of reducing the amount of expenditure on local government. This was achieved under Prime Minister Thatcher by policies of rate capping designed to prevent authorities from using increases in local taxation to raise additional revenue, especially when faced with cuts from block grants from central government, and through the exposure of all councils to compulsory competitive tendering and then best value initiatives. The period 1979-2010 marked a major revision by the introduction of competition and by challenging assumptions over the delivery of community services in house by local authorities. The contracting out of services to private companies or independent charities was a sustained attempt to achieve greater value for money<sup>3</sup>. The employment of a contract model for the delivery of services ranging from refuse collection and street cleaning to care for the elderly and the catering arrangements within council offices has permanently changed the profile of local councils. Nevertheless, notwithstanding the radical change from public to private delivery there has been an assumption that the weakest in the community need to be protected. In other words, some degree of consensus lies behind party political contestation concerning the crucial role of local government in guaranteeing a base level of services and in the protection of vulnerable groups.

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(3) See Local Government Act 1988 (Compulsory Competitive Tendering), Local Government Act 1999 ("Best value" in the performance of functions).

(4) It should be noted that the Local Government Finance Bill 2012 will have a far

Any reduction in ring fencing concerning resource allocation and service delivery in the hands of local authorities promises to have far reaching consequences for local communities<sup>4</sup>. Another fundamental issue is whether claims to greater autonomy can be sustained without a substantial extension in revenue raising powers at a local level, with 75% of finance originating from central government. The cuts which are in the process of being implemented will be felt most acutely in the areas of highest unemployment and social deprivation. Lord Beecham stressed in the House of Lords that: “Time and again peers, including distinguished former Conservative ministers, have challenged the undermining of representative local democracy reflected in excessive prescription by the government, and the effective by-passing of elected councillors and councils in favour of local referendums and decision-making bodies with minimal democratic legitimacy”<sup>5</sup>. The new path which undermines the organic integrity of the institution of local government and which could lead to its fragmentation into disparate local entities calls into question whether an emasculated form of local government would be able to perform the same function as a national institution.

### *What is the “Big society”?*

As an alternative to high profile government the Big Society has been widely trumpeted as the central political idea framing Conservative Party policy<sup>6</sup>. Certain aspects of this initiative bear a resemblance to Blair’s *Third Way* which was heavily reliant for its delivery on “stakeholders” from the voluntary and private sector. By way of contrast the Big Society has been presented as a reaction to the claimed statist centralising policies of the previous Labour government<sup>7</sup>. It appears that the guiding philosophy is to create a society where the lead-

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reaching impact on the capacity of councils to provide the range and quality of services available to local communities.

(5) *The Guardian*, 8 September, 2011.

(6) D. Cameron, *Our Big Society Plan*, 2010.

(7) C. Pattie and R. Johnston, *How Big is the Big Society?*, *Parliamentary Affairs*, Vol. 64, No 3, 2011, 403-424.

ing force for progress is a concept of social responsibility which is expected to replace state control. The initiative will be returned to grass roots level by promoting what is referred to as people power<sup>8</sup>. The objective is to break state monopolies and, in their place, allow charities, social enterprises and companies to provide public services. "Civil society activity is seen not just as filling gaps left by a retreating 'nanny state' but also as offering innovative and independent alternative to meeting social needs"<sup>9</sup>. For example, by allowing free schools to be set up outside of local government by parents, communities, faith groups, charities, businesses and universities. The intention is to further reduce the size of the state at the central and local government levels. In the domain specifically of local government the declared agenda of the coalition government is to introduce a radical shift in the balance of power and to decentralise power as far as possible. The Localism Act 2011 is meant to step beyond giving power back to local government. The Secretary of State for Communities and other ministers have repeatedly stated that ordinary citizens should be trusted to take charge of their lives and that these measures are designed to push power downwards and outwards to the lowest possible level, including individuals, neighbourhoods, professionals and communities as well as local councils and other local institutions. The Big Society initiative represents the attempt of the Conservative Party under Prime Minister David Cameron to square the circle of further reducing the role of the state while maintaining a commitment to health and social welfare<sup>10</sup>. The high-sounding goals must be viewed with some scepticism. Such an agenda is ambitious precisely because it depends on much greater participation and this requires legions of volunteers coming forward just when unemployment is rising and the voluntary

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(8) See P. Leyland, *The Constitution of the United Kingdom: A Contextual Analysis*, 2<sup>nd</sup> edn, Oxford: Hart Publishing, 2012, 286ff.

(9) V. Lowndes and L. Pratchett, Local Governance under the Coalition Government: Austerity, Localism and the "Big Society", *Local Government Studies*, Vol. 38, No 1, 21-40, February 2012, 32.

(10) M.J. Smith, From Big Government to Big Society: Changing the State-Society Balance, *Parliamentary Affairs*, Vol. 63, No 4, 2010, 818-833 at 832.

and charity sectors are faced with massive cuts in the income they receive from central and local government<sup>11</sup>.

*Part I: Devolving Down and the Conferral of Community Rights*

In order to overcome the inhibitions caused by an approach which has assumed that the actions of local authorities must be justified by positive law the Localism Act for the first time grants local authorities a power of general competence<sup>12</sup>. This new power is at variance with the traditional position of local government which worked on the assumption that local authorities were strictly controlled by statute and needed statutory authority to act but now in principle local authorities are granted this new general power to act. Such a power is clearly intended to allow councils to proceed further into the territory of commercial contracting with a reduced prospect of judicial challenge<sup>13</sup>. The general power of competence was tested in a case involving Bideford Town Council. It was held that the Council were acting unlawfully by allowing prayers to be said at the beginning of a council meeting. The power was not lawful under s.111 of the LGA 1972 and there is no statutory power permitting the practice to continue<sup>14</sup>. The Secretary of State later commented that there is now a general power of competence which allows councils to do anything not prohibited by law, including holding prayers before meetings<sup>15</sup>.

Second, an apparently ground-breaking idea under the Localism Act associated with the handing down of powers and functions involves the introduction of the option to take matters away from the control of local government altogether. A new community right to buy will ensure that community organisations have a fair chance to bid to take

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(11) See Pattie and Johnston, 412.

(12) See Localism Act s.1 which provides that "A local authority has power to do anything that individuals generally may do and this includes the power to do it for a commercial purpose or otherwise for a charge, or without a charge".

(13) [ukconstitutionallaw.org/2012/03/19/andrew-le-sueur-fun-loving-guys-and-the-rule-of-law](http://ukconstitutionallaw.org/2012/03/19/andrew-le-sueur-fun-loving-guys-and-the-rule-of-law).

(14) [www.secularism.org.uk/uploads/bideford-judgment-final.pdf](http://www.secularism.org.uk/uploads/bideford-judgment-final.pdf).

(15) C. Sear, Local Authorities: the general power of competence, 20 September 2012, 8.

over land and buildings that are important to them and a community right to challenge voluntary and community groups, parish councils and local authority staff will be able to challenge to take over the running of local services. It should be remembered that already local authorities had been granted discretionary powers to enter into partnership arrangements with local bodies or agencies and that at the same time a power of community initiative had been introduced previously<sup>16</sup>. In practice, this power amounted to little more than a “constitutional mission statement which would give structure and purpose to the many specific powers and duties of councils”<sup>17</sup>. However, under the Localism Act 2011 the relevant authority is placed under a statutory duty to consider whether an expression of interest, and how any subsequent procurement exercise, can promote or improve the social, economic or environmental well being of its area<sup>18</sup>. This provision is meant to ensure that authorities take account of the benefits that relevant bodies and others can provide over and above delivery of the service. The Secretary of State for Communities and Local Government may do anything that he considers appropriate for the purpose of giving advice in relation to such a scheme. The Community Right to Challenge is intended to give community groups, parish councils and local authority employees the right to submit an “expression of interest” in taking over and running a local authority service. The local authority must consider and respond to the challenge. If a local authority accepts the challenge they must then run a procurement exercise in which organisations – including those that challenged the delivery of the service but also private companies – can bid to take over the running of the service. However, the Act requires authorities to undertake this consideration in a way that complies with procurement law. Failure to do so provides a number of grounds for legal challenge. There are constraints on the power of local authorities to reject expressions

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(16) Local Government Act 2000, ss2-4.

(17) I. Leigh, *The Changing Nature of Local and Regional Democracy*, in J. Jowell and D. Oliver (eds) *The Changing Constitution*, 7<sup>th</sup> edn (Oxford, Oxford University Press, 2011), 243.

(18) Localism Act 2011, Ss81-83.

of interest. In the government's estimation this initiative is innovative because it represents a decisive move away from the monopoly control of councils and towards a brave new world of competition and diverse delivery that will bring in its wake innovation, responsiveness and efficiency<sup>19</sup>. A less positive interpretation of what such an exposure to market forces might lead to might regard these same measures as merely a means of giving business organisations, including large scale multi-nationals, greater access to public sector markets.

### *The Community Right to Challenge*

The Localism Act explores a different type of entry point for public participation in community development<sup>20</sup>. Stakeholder groups comprising businesses, voluntary organisations and interested citizens have an opportunity to realise clearly defined objectives "in providing or assisting in providing a relevant service on behalf of the authority"<sup>21</sup>. This new initiative opens up the additional prospect that responsibility for taking on functions and delivery of the policy can be placed directly in the hands of the community groups, businesses and citizens at grass roots level. It is anticipated that such a process will provide a further opportunity for the most articulate and confident in society. The obvious danger is that such a mechanism could allow relatively well organised and powerful groups and organisations to make claims on increasingly scarce resources and thus predominate in particular areas of activity at the expense of wider community interests. At the same time the community right to challenge is likely to promote a trend towards ever greater fragmentation of activities which would make it increasingly difficult to maintain consistent standards. Instead of taking the lead on local matters as the agency for delivery local authorities may be reduced in importance so that progressively they assume a role as commissioners, market shapers and regulators but not as deliverers of policy in their own right.

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(19) See e.g. J. Crowe, The Government's Plans for Decentralisation and Localism: A Progress Report, *The Political Quarterly*, Vol 82, No 4, October-December 2011, 651-657, 654.

(20) Localism Act 2011, chapter 2.

(21) Localism Act 2011, s.81(4).

In this context of devolving down referendums were to be available as a form of direct democracy at local government level as a means of assisting in the generation of change. The Localism Bill in its original form provided that citizens, councillors and councils should have the power to instigate a local referendum on any local issue<sup>22</sup>. Although these referendums were to be non-binding in a legal sense, local authorities and other public authorities would have been required to hold a referendum at considerable expense and to take its outcome into account in their decision-making. The government believed that local electors across England have lacked a general mechanism by which to trigger a local referendum on issues of importance to them and through which to influence local decision-making and make their views known. To address this issue and provide electors with such an opportunity to influence local decisions, the Localism Bill had proposed that residents and stakeholders should have the power to trigger local referendums on any local issue if a petition was signed by 5% or more of local electors<sup>23</sup>. The idea was to open up the potential for direct citizen participation and community involvement. In the Localism Act 2011 in its final form the emphasis on referendums as mechanisms for expressing citizenship as a community right to challenge was abandoned.

The use of referendums in the domain of local government has also been questioned on the basis that it ran the risk of undermining representative democracy<sup>24</sup>. Instead of councillors acting as elected representatives to make up their minds on a range of complex issues on behalf of the local electorate the Bill in its original form would have unleashed an unprecedented populist dimension which could be used to determine policy outcomes. If referendums were to be established on a routine basis to create local government by plebiscite local politics is redefined with elected politicians in danger

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(22) See the Localism Bill.

(23) *Ibid*, Schedule 2, 9MC(4).

(24) See *“Localism” Communities and Local Government Committee*, Third Report of Session 2010-12, 7 June 2011, HC 547, 38.

of becoming marginalised from the most important decision-making. The original bill contained a rationale for a new form of stakeholder democracy in which members have different kinds of mandate and legitimacy<sup>25</sup>. Objections included a lack of motivation at grass roots level and the potential cost and organisational challenges involved in holding referendums to launch such initiatives.

The community right to challenge works on the assumption that neighbourhood units are physically more accessible than established local authorities. The motivation of communities at this level would make it easier to facilitate direct participation. An obvious problem is that such an approach raised wider questions about how communities mobilise. Who should provide leadership in these circumstances and why should such initiatives be restricted to any particular form of empowerment?

### *Changes to Planning Controls*

As part of the strategy of devolving down the Localism Act introduces major changes in planning regulations in the hands of local government. The starting point is to introduce a duty under the act to cooperate to encourage the planning of sustainable development<sup>26</sup>. The challenge for the government in reforming the regulation of planning is to achieve more flexibility at the lowest possible level without compromising the rural environment. The new neighbourhood planning scheme<sup>27</sup> under the Act which replaces regional strategies<sup>28</sup> will allow town councils and parishes to submit a neighbourhood development plan and a neighbourhood development order to the local planning authority. This plan or order will set out their planning policy which is made subject to approval at a local referendum. By preparing devel-

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(25) H. Sullivan, *Neighbourhood Governance: An Opportunity Missed*, in J. Raine and C. Staitte (eds) *The World will be your Oyster? Reflections on the Localism Act of 2011*, Institute of Local Government Studies, University of Birmingham, 29.

(26) Localism Act 2011, s.110.

(27) Localism Act 2011, s.116

(28) Localism Act 2011, s.109.

opment plans and orders local councils and local people are intended to have a much greater input in guiding development in their immediate locality. However, some of the planning aspects of the Localism Act 2011 are controversial. This is because they appear to shift policy towards development at the expense of green belt land in response to lobbying from the construction industry. For example, the Act introduces a community right to build order which may be given approval without the need for a formal application for planning permission<sup>29</sup>. A community organisation formed from local community interests will be able to bring forward developmental proposals which can be approved without formal planning permission provided the proposal meets minimum criteria and gains approval at a referendum. These changes are directed at tackling the lack of development, particularly housing development, in rural areas which frequently encounters resistance from local communities. The issue of concern is whether an appropriate balance has been reached between conservation and business policy.

### *Removing Red Tape*

At the same time as liberalising planning controls and granting local authorities more scope in the way local services are run another government objective in passing this legislation is to reduce the statutory duties imposed on local authorities. Over many generations local government has accumulated a catalogue of such duties under many different legislative provisions which frequently relate to the delivery of social policy. For example, in the domain of housing, among other things, councils are required to: periodically review housing needs requirements; they have a duty to rehouse residential occupiers displaced by compulsory purchase; they must exercise of tenants rights to buy council housing requirement; they must consult tenants before homes are transferred to private landlords. A clear outcome of the Review was that respondents, particularly interest groups and the public, used the opportunity to remind central Government of the

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(29) Localism Act 2011, Schedule 11.

importance of these duties. An overwhelming majority of those responding wanted to see these duties maintained as protections rather than identify duties that could be regarded as unhelpful and unnecessary<sup>30</sup>. It is interesting that the government's response to the consultation over what duties could be repealed acknowledged overwhelming support for preserving these specific duties. According to the present government the emphasis is on establishing democratic accountability to replace the central bureaucratic systems based on target setting. There is also evidence which suggests a lack of a joined up approach to reducing bureaucracy with other government departments such as health and education, imposing on officials the requirement of a higher burden on data returns<sup>31</sup>. Under the revised approach local government should develop its own performance measurement in preference to a centralising approach.

### *Part II: Establishing Structure and Issues of Central Control*

In the second part of this discussion it will be argued that there are important elements of coalition policy which tend to undermine the claims to genuinely confer autonomy upon local communities. In regard to local government structure, the Act goes much further than any previous legislation in its attempt to establish Mayoral forms of local government in England's leading cities by a series of obligatory referendums. On the one hand the referendums for Mayor will almost certainly result in divergence between the systems of city wide governance but, in turn, such a change in structure is likely to expose major cities to a new style of local politics which has potential drawbacks; but first we have to consider the issue of financial control.

### *Referendums and the control of expenditure*

As will be clear from contextual introduction to this article a fundamental issue concerns the degree of financial autonomy afforded to

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(30) [www.communities.gov.uk/documents/localgovernment/pdf/1934356.pdf](http://www.communities.gov.uk/documents/localgovernment/pdf/1934356.pdf).

(31) See e.g. J. Crowe, The Government's Plans for Decentralisation and Localism: A Progress Report, *The Political Quarterly*, Vol 82, No 4, October-December 2011, 651-657 at 653.

local government in the United Kingdom. The centrality of this issue has been recognised by experts working in the field. For example, Professor Leigh observes: “A recurrent plea from bodies recommending reform is to decrease local government dependence on central grant”<sup>32</sup>. The corollary for any such aspiration is to deliver reforms of local government finance which shift the balance away from a dependence on central government and at the same time embed a fundamental linkage between tax and spend at local government level. In particular it has been recognised that: “There is a huge gap in the Bill; a Localism Bill that lived up to its name would have dealt with the financing of local government. Centralism will prevail as long as local authorities are 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”<sup>33</sup>. While the Localism Act 2011 steps back from a policy based upon rate capping, the Act in other ways re-enforces the powers of central government as an agency for establishing control of expenditure at local government level. The capacity for municipal governance to express itself as a purveyor of the Big Society vision rings hollow faced with the prospect of central government intervention to keep local authorities within expenditure limits.

The Localism Act provides that referendums may be used as a means of controlling expenditure by the Secretary of State for Communities and Local Government<sup>34</sup>. Local authorities are placed under a statutory duty to determine whether the council tax they propose to levy is excessive according to criteria set by central government. The referendum requirement arises where an authority sets an amount of council tax beyond that approved by the Secretary of State. Under the new procedure before the referendum is held the authority is required to calculate an alternative budget which complies with the criteria set

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(32) I. Leigh, *Law, Politics and Democracy*, Oxford: Oxford University Press, 2000, 113.

(33) Professor George Jones: <http://blogs.lse.ac.uk/politicsandpolicy/2011/03/11/localism-bill-and-centralism>.

(34) Localism Act 2011, Schedule 5, 52ZB.

by the Secretary of State. If the result of the referendum favours the council concerned the original “excessive” budget will be introduced. On the other hand, if the council’s favoured budget is not approved by the local electorate in the referendum the substitute budget will take effect in its place<sup>35</sup>. If instructed to do so the council must make arrangements to hold a referendum. The crucial point is that it is the Secretary of State who is empowered to set the parameters for determining whether a proposed increase in council tax is deemed to be excessive. In effect, the referendum requirement is triggered by the judgment of the Secretary of State<sup>36</sup>. Although a radically different system has been adopted under the Localism Act, another method of control is in place which attempts to keep the purse strings in the hands of the minister and therefore still gives local authorities very limited financial autonomy.

### *Structural Reform: Referendums for Directly Elected Mayors*

Next we turn to the proposals to transform the governance arrangements in cities through the introduction of elected Mayors. The Secretary of State for Communities and Local Government is granted powers under the Localism Act to trigger referendums in regard to local governance arrangements. This power has since been used to compel England’s biggest cities to hold referendums on adopting a revised system of governance based upon a directly elected Mayor and Cabinet model<sup>37</sup>. Where these referendums turn out in favour of a Mayor the governing structure of the authority in question is modified accordingly. The imposition of referendums on all the main English cities can be contrasted with the more laid back approach taken by

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(35) Localism Act 2011, Schedule 5, 52 ZH.

(36) Localism Act 2011, s72 and Schedule 5, 52ZC.

(37) This requirement would have applied to the 12 biggest cities but Leicester elected its first mayor in May 2011 and Liverpool City Council pre-empted the holding of a referendum when the council voted overwhelmingly to opt for a directly elected Mayor in February 2012. Council Leader Joe Anderson was able to secure a package of £130 million for the city, including greater control over housing, skills and economic development with new low tax enterprise zones. See “Elected mayor to run Liverpool”, *Financial Times*, February 8, 2012.

the New Labour Blair Government more than a decade earlier which also responded to what it too regarded as a crisis in local government with revised arrangement for the structure of councils<sup>38</sup>. Under the Local Government Act (LGA) 2000 councils were required to modify their internal procedures in line with one of four models<sup>39</sup>. After passing such an important piece of legislation the Labour government was criticised for not giving a strong lead in favour of any of the systems it proposed<sup>40</sup>. Although under the LGA 2000 the *status quo* was not an option for councils in England and Wales, with local authorities under an obligation to change to one of the revised alternatives<sup>41</sup>, the method of consultation was not specified in the legislation and this led to disparities in the process<sup>42</sup>. Some authorities held referendums<sup>43</sup>. Others simply sent out questionnaires to the electorate. The response rate in certain cases was farcical, with only 1% of households returning forms in Liverpool, but in Birmingham a more respectable 31% of households replied. The patchy response a decade earlier illustrated the difficulty in gaining credibility for a revised system<sup>44</sup>.

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(38) See e.g., White Paper, *Modern Local Government: In Touch with the People*, 1998 (Cm 4014).

(39) See Local Government Act 2000 sections 11 and 12 which set out four forms the executive can take: (a) cabinet with leader; (b) directly elected mayor with cabinet; (c) directly elected mayor and council manager; (d) streamlined committee system which can be adopted by any district council with a population below 85,000.

(40) See P. Hetherington, Ruction in the Town Halls, *The Guardian*, 31/10/01.

(41) The LGA 2000 required the introduction of local constitutions detailing the operational framework for each local authority. S.37(1) states that local authorities must prepare and keep an up to date document which contains a copy of the authority's standing orders and code of conduct. This must be made available to the public.

(42) See Local Government Act 2000 sections 34-36. Guidance notes simply refer to dialogue between a local authority and the community which it serves and further guidance refers to many different methods of collecting/measuring public opinion.

(43) Section 34 of the Local Government Act 2000 permits the minister to make regulations to allow a referendum. According to these rules this must be held following the presentation of a petition demanding one.

(44) The common response over this consultation has been summed up as a combination of "reticence and confusion". One problem is being able to clearly convey the relative merits of the systems on offer. See L. Pratchett, *Local Government: From Modernisation to Consolidation*, *Parliamentary Affairs*, 2002, 331-346 at 334.

On the 3<sup>rd</sup> May 2012 referendums were held in ten of England's largest cities. The question asked was: "How would you like your council to be run? By a Leader who is an elected councillor chosen by other elected councillors. This is how the council is run now or by a Mayor who is elected by the voters". Bristol voted 53.3 to 46.7 in favour of having a Mayor. Birmingham, Bradford, Coventry, Leeds, Manchester, Newcastle-upon-Tyne, Nottingham, Sheffield and Wakefield voted to keep their present system<sup>45</sup>. It will be apparent that the cabinet with leader option has been most favoured as well as being the one operating in most of the largest cities in England outside of London. However, Liverpool, Leicester and Bristol are major cities now having elected mayors. The decisive rejection of Mayors in so many other cities was humiliating for the coalition government which had insisted on these referendums and it has led to an even more varied approach to governance in the largest metropolitan areas.

The leader elected by other councillors was nearest to the system already in place throughout the UK before the 2000 reforms and it is the system still most favoured by elected councillors. The important feature that this cabinet with leader option has in common with the previous arrangement is that the leader still depended on the support of the council to sustain his/her position and thus the leader is unlikely to follow policies which were not approved by the council. If we take the city of Manchester as a typical example of a post-reform council, we find that it has been run by an executive board of 10 members (cabinet) which provides corporate direction, develops and co-ordinates budgets and monitors overall performance. The executive consists of the leader, both deputy leaders and seven executive members each with a special responsibility for a particular policy area<sup>46</sup>. The Executive is then responsible for implementing the budgetary and policy framework and has full authority to act, which means that most of its decisions do not need approval by the council. There

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(45) [www.bbc.co.uk/news/uk-england-17854687](http://www.bbc.co.uk/news/uk-england-17854687).

(46) These policy briefs are: culture and leisure, education, environment, finance and human resources, health and social care, housing and planning and transport.

were several novel features. For instance, the executive was not any longer a committee of the council. It could be formed from a single political party or comprised as a multi-party body. Meetings of the executive could take a greater number of decisions which did not require ratification by the council and there were a number of ways in which responsibilities could be delegated to individuals and officials. This could include individual decision-making powers<sup>47</sup>. The point being that the LGA 2000 was concerned to streamline decision-making by providing more effective management and stronger leadership. Although there was a choice from a range of political structures, it gave councils a clear executive which was responsible for taking the majority of decisions, within a framework decided by the full council but which was made more accountable. Although a new form of executive had been designed to replace the system of decision-making by council committees, regulatory committees, which reflect the political membership of the council, continued to fulfil the quasi-judicial decisions, in relation to the planning and licensing functions of local authorities. The effect has been to create a new decision-making framework in which there is a separation of decision-making and scrutiny of decisions by new committees.

The motivation for this ministerial intervention for referendums to be held in major cities was, in part, influenced by the successful introduction of a Mayor and Assembly for London. The Greater London Authority Act has been a successful innovation. It established two elected institutions. A directly elected Mayor and an Assembly representing 14 constituencies and 11 London-wide seats chosen under the additional member system of election. The Mayor has a high profile as the politician in charge of London with responsibility for among other things transport, the Metropolitan Police, London Fire and Emergency Planning. The Mayor prepares strategies relating to the policy areas

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(47) I. Wilson, Reflections on Modernisation, *Local Governance*, 2002, Vol. 28, No 2, 155-161. It is pointed out at p.159ff that this division of roles between councillors with decision-making powers and the remainder on committees means that decisions are taken by very few and debate has become much more limited. As a result of this lack of power most councillors are in danger of feeling marginalised.

but under the legislation he is made directly accountable to the elected Assembly. Up until 2012 the directly elected mayor with cabinet model, with similarities to that introduced in London, had been chosen in fourteen towns but no big city had selected this option<sup>48</sup>. As we just noted the most obvious difference from the leader with cabinet system is that the mayor and the council are elected separately. This feature gives the mayor a direct mandate for local policies and the council's main function is then to hold the mayor to account for these policies. After the election the mayor is in a strong position and is able to appoint a cabinet of between two and ten councillors. This model has parallels with systems that operate in some cities in the USA with less than 25,000 inhabitants<sup>49</sup>. The idea is that the mayor who is elected on a manifesto will act as the political leader while the manager takes responsibility for the day-to-day operational decisions. Although this method is regarded as an effective form of decision-making, experience in the United States indicates that the city manager can end up playing the active role in the policy making process and therefore become the most visible and dominant figure. The image of a civic entrepreneur actively promoting the interests of constituents lies behind the introduction of this more streamlined approach<sup>50</sup>. The civic entrepreneur model has obvious drawbacks. It not only introduces the personalisation of politics<sup>51</sup>, but another problem is that giving powers to mayors and council managers runs the risk of marginalising the democratic process because it reduces the involvement of the other elected representatives. In Middlesbrough,

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(48) By May 2002 the electorate of 10 medium-sized councils had voted in favour of the mayor with cabinet option: Bedford, Doncaster, Hackney, Hartlepool, Lewisham, Mansfield, Middlesbrough, Newham, North Tyneside and Watford.

(49) See H. Wolman and M. Goldsmith, *Urban Politics and Policy: A Comparative Approach*, Oxford, Blackwell, 1992, 148.

(50) A. Rawnsley, *Servants of the People: the Inside Story of New Labour*, London, Penguin, 2001, at p.342 suggests that in spite of opposition from the cabinet the inclusion of mayors as an option was a direct consequence of the Prime Minister's personal enthusiasm for a dynamic American style model of city government.

(51) J. Brooks, *Labour's Modernisation of Local Government, Public Administration*, Vol. 78, No 3 (2000), 593-612 at 602.

for example, the elected mayor has run the council with an executive (i.e. cabinet) of nine counsellors<sup>52</sup>. The role of the board (cabinet) is described as being to make and direct the council's policy. This might appear to put the mayor in a dominant position in which she/he is more easily able to implement her/his programme and thus promote the cause of speedier and more efficient decision-making. While this was the stated objective that lay behind the Blair reform project departmental guidance from central government undermined this very feature by making "key" decisions subject to an elaborate process of pre-decision consultation with relevant stakeholders<sup>53</sup>.

In leaning towards elected mayors for large cities the influence of the United States and the system in places in continental cities such as Paris has also been a factor. The image of dynamic civic leadership in the USA has been associated with the tenure ship of well known individuals. One such example is Mayor Giuliani who during his period at the helm in New York was credited with turning the fortunes of the city around through his commitment to high profile policies, e.g. zero tolerance in the fight to tackle the high level of street crime. However, this is by no means typical, and to take another high profile example, the record of corruption and incompetence of Marion Barry in Washington DC during 1980's and 1990's which caused the city finances to collapse leading to the federal government taking over can be cited in stark contrast. Further, mayors in the USA cannot be simply characterised as strong and weak, rather their institutional position in relation to the electorate, budget and council tends to vary enormously and the tendency is for them to be weaker rather than stronger. In fact closer analysis reveals that the situation in the United States is not an easy example for the UK to follow because the importation of this formula fails to take account of fundamental differences in politi-

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(52) [www.middlesbrough.gov.uk/ccm/navigation/council--government-and-democracy/mayor-and-political-structures](http://www.middlesbrough.gov.uk/ccm/navigation/council--government-and-democracy/mayor-and-political-structures).

(53) S. Leach and D. Norris, Elected Mayors in England: A Contribution to the Debate, *Public Policy and Administration*, 2002, Vol. 17, No 1, 21-38 at 25 and see DETR (2001), Local Government Act 2000; Consultative Draft of Proposed Guidance and Regulations on New Constitutions for Councils.

cal culture. Political parties and not individuals are associated with developing policy in the United Kingdom. Individuals seeking to be adopted for mayor are likely to depend on endorsement by one of the major parties. Once selected and then elected on a party programme there will be a strong pressure on a mayor to deliver manifesto commitments, failure to do so would give rise to a risk of non re-selection by the party<sup>54</sup>. However, despite problems with translating the idea, it has been recognised that a mayor might be able to assume a more effective political role under such a system<sup>55</sup>.

The imposition of referendums in the largest English cities at the behest of the Secretary of State for Communities should not only be regarded as a top-down interventionist policy by central government but also as an assault on the type of party politics that have underpinned local government. The LGA 2000 was concerned to streamline decision-making by providing more effective management and stronger leadership. It sets out a choice from a range of political structures in order to give councils a clear executive, which would be responsible for taking the majority of decisions, within a framework decided by the full council but which was made more accountable. By way of comparison a trend towards elected Mayors runs the risk of replacing the familiar ideologically grounded party politics of local government with political manifestoes and campaigns built around the cult of individual politicians.

### *Conclusion*

The Communities Parliamentary Select Committee was in no doubt that the government must reign in its interventionist instincts for the new approach to be effective and it concluded that a constitutional

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(54) Leach and Norris, 2002 above at p.34/35.

(55) A dominant mayor has been characteristic of many cities in the USA but often the mayor has to share powers with other individually elected officials rather than a separately elected council. The mayor does not appoint from another elected body as is the case under the model proposed under the Local Government Act. See H Wolman and M. Goldsmith, *Urban Politics and Policy: A Comparative Approach*, Oxford, Blackwell, 1992, 147.

solution is required: “The explanations of localism and decentralisation that the Government has thus far provided invoke very diffuse aims from which it is difficult to construct a coherent picture of the end goal. There is little clarity about who will ultimately be responsible for what. Increasing the influence of local decision-making is bound to result in some unpredictable outcomes, but we recommend that the Government undertake to provide a more detailed explanation of the framework within which it envisages such changes taking place and the limits that will be set to central intervention. A constitutional settlement, overseen by a joint committee, could provide such a framework, at least insofar as it relates to the role of local government”<sup>56</sup>. The Localism Act 2011 received its Royal assent at the end of 2011 and most of its provisions have only recently come into force. In consequence, it is much too early to pass anything but a provisional judgment on this piece of flagship legislation from the Coalition Government. In reaching its diagnosis the government was able to identify a deep-rooted scepticism with the traditional forms of local government which is reflected in the lamentable turnout at election times. At first encounter the idea of people power associated with the Big Society has a seductive attraction to it. Of course, in one sense it is a truism to claim that individuals are keen to be much more directly in control of their own destiny, but will the redistribution of power to local communities really happen? Not only is community motivation to take over welfare unlikely to be activated on a nationwide basis under the new act, but the absence of additional revenue raising powers, and therefore the lack of correlation between tax and spend at local level, tends to undermine the claim to be genuinely devolving power downwards. The question is not only whether this legislation will act as a credible vehicle to deliver a more devolved system, but rather whether the threat posed by fragmentation will undermine the strength and coherence of the entire institution of local government in the current hostile environment of public expenditure cuts. The

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(56) “*Localism*” *Communities and Local Government Committee*, Third Report of Session 2010-12, 7 June 2011, HC 547, Para 24.

ubiquitous resort to populism available through referendums under the Act potentially threatens the role of elected politicians at local level by taking decision-making out of their hands. However, referendums are likely to be of marginal significance given their cost and the organisational obstacles involved in holding them.