



**THE CONSTITUTIONAL STATUS OF LOCAL  
GOVERNMENT IN OTHER COUNTRIES**

**REPORT PREPARED FOR THE COMMISSION ON LOCAL  
GOVERNMENT AND THE SCOTTISH PARLIAMENT**

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## **EXECUTIVE SUMMARY**

The purpose of this report is to assist the Commission on Local Government and the Scottish Parliament in its consideration of how to enable local government and the Scottish Parliament (and Executive) to work together for the good of Scotland's people.

The report explores six key themes in a selection of countries:

- the constitutional status of local government;
- the distribution of functions between the levels of government;
- powers of intervention and direction;
- electoral arrangements (and the role of elected mayors or executives);
- financial powers or responsibilities of local government (including taxation); and,
- themes and issues which characterise the different national approaches to local government.

The countries which were used for the comparison have a variety of different constitutional arrangements for local government. Despite the history and 'permanence' of some of these arrangements, all systems have undergone, or are undergoing, change. This change may be imposed by national (or federal) or regional (or state) governments, or it may be initiated by the local authorities themselves as they balance needs for efficiency, representation, national cohesiveness, and local identity.

The countries we looked at are all different. They all have different histories, and the institutions of national, regional, and local government have all played different parts in these histories. Anyone looking at the features of local government in different countries should be warned against a 'pick-and-mix' approach as there are many contingent factors which contribute to the relative success or failure of local government in different settings.

Any learning from other countries should be tested against five criteria:

1. Are the problems which are addressed by the alternative policy, or form of organisation, similar to the problems being addressed? If they are not *exactly* the same, are they similar enough to make learning possible?
2. To what extent is the policy, or form of organisation, 'successful' in the 'other' country? What critics are there? How can Scotland learn from the success and the criticism?
3. How far are particular contingent factors instrumental in the suitability and success of the policy, or form of organisation, in the 'other' country? Which of these contingent factors are *necessary* – and which of the necessary factors exist (or could be made to exist) in Scotland?
4. Does the alternative approach meet the key political objectives, and satisfy the ideological preferences of decision-makers in Scotland? Is the 'other' country one with which citizens and decision-makers can identify?
5. Is the policy, or form of organisation, attractive to stakeholders who will play a part in its implementation? Is implementation a 'zero sum game' or are there opportunities for 'winning' all round?

There are a number of features which differentiate local government in different countries from Scottish local government. The countries which we have considered in this review are: Australia, New Zealand, the United States of America, Germany, France, The Netherlands, Denmark, Sweden and Switzerland.

In most of these countries:

1. local authorities have a wider range of powers and responsibilities than those in Scotland and often the range of powers and responsibilities in these countries is *increasing*;

2. the basic unit of local government is smaller (and seen, therefore, as closer to the people) than in Scotland;
3. local authorities are much more likely to co-operate with each other, with the private sector, and with their own citizens (the voluntary traditions in the USA and Switzerland for instance) than has typically been the case in Scotland;
4. local authorities typically raise a higher proportion of their income than do local authorities in Scotland.
5. there is some form of proportional representation in local and/or national elections;
6. arrangements for voting are more accessible (and in some cases obligatory);

The scope of this report does not extend to consideration of the relative effectiveness of these models in the countries themselves nor to their potential applicability in other settings. But it is clear that their relative success or failure is dependent on many contingent factors and thus a 'pick-and-mix' approach is strongly advocated against.

The experience of other countries suggest that there are a number of key dimensions for consideration:

- the constitutional position of local government particularly whether the guiding principle is *ultra vires*, *general competence* or *community governance*;
- the case for subsidiarity;
- alternative forms of political management arrangements;
- alternative forms of electoral arrangement;
- effective integration and networking between levels of government;

- approaches to citizen involvement;
- alternative forms of service delivery; and
- the mix of regulatory and implementation roles.

As the McIntosh Commission has itself observed<sup>1</sup>, the debate about improving local government will move along a number of dimensions. We hope that these snapshots of how other countries manage their democratic systems will inform the debate.

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<sup>1</sup> The Commission on Local Government and the Scottish Parliament, Consultation Paper 1. 1998

## CHAPTER ONE INTRODUCTION

- 1.1 The purpose of this report is to assist the Commission on Local Government and the Scottish Parliament in its consideration of how to enable local government and the Scottish Parliament (and Executive) to work together for the good of Scotland's people.
- 1.2 The report explores six key themes in a selection of other countries:
- the constitutional status of local government;
  - the distribution of functions between the levels of government;
  - powers of intervention and direction;
  - electoral arrangements (and the role of elected mayors or executives);
  - financial powers or responsibilities of local government (including taxation);  
and,
  - themes and issues which characterise the different national approaches to local government.
- 1.3 The countries which were used for the comparison have a variety of different constitutional arrangements for local government. Despite the history and 'permanence' of some of these arrangements, all systems have undergone, or are undergoing, change. This change may be imposed by national (or federal) or regional (or state) governments, or it may be initiated by the local authorities themselves as they balance needs for efficiency, representation, national cohesiveness, and local identity.
- 1.4 The countries we looked at are all different. They all have different histories, and the institutions of national, regional, and local government have all played different parts in these histories. Anyone looking at the features of local government in different countries should be warned against a 'pick-and mix' approach as there are many contingent factors which contribute to the relative success or failure of local government in different settings.

1.5 Any learning from other countries should be tested against five criteria<sup>2</sup>:

1. Are the problems which are addressed by the alternative policy, or form of organisation, similar to the problems you are trying to address in Scotland? If they are not *exactly* the same, are they similar enough to make learning possible?
2. To what extent is the policy, or form of organisation, 'successful' in the 'other' country? What critics are there? How can Scotland learn from the success and the criticism?
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1.7 In most of these countries:

1. local authorities have a wider range of powers and responsibilities than those in Scotland and often the range of powers and responsibilities in these countries is *increasing*;

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<sup>2</sup> Development Administration Group, *Other People's Local Government*. (1996); Stoker, G. The European Union, Local Government and the Regions, in Taylor A. (Ed) *The Renaissance of Local Government* SOLACE (1995)

2. the basic unit of local government is smaller<sup>3</sup> (and seen, therefore, as closer to the people) than in Scotland;
3. local authorities are much more likely to co-operate with each other, with the private sector, and with their own citizens (the voluntary traditions in the USA and Switzerland for instance) than has typically been the case in Scotland;
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5. there is some form of proportional representation in local and/or national elections;
6. arrangements for voting are more accessible (and in some cases obligatory);

1.8 As the McIntosh Commission has itself observed<sup>4</sup>, the debate about improving local government will move along a number of dimensions. We hope that these snapshots of how other countries manage their democratic systems will assist in that debate.

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<sup>3</sup> See Appendix 3

<sup>4</sup> The Commission on Local Government and the Scottish Parliament, Consultation Paper 1. 1998

## CHAPTER TWO THE CONSTITUTIONAL STATUS OF LOCAL GOVERNMENT

- 2.1 This section provides a brief description of the constitutional status of local government in each of the selected countries. It also describes the mechanisms for changing the status of local government.
- 2.2 **New Zealand** has the system closest to that in the UK. There is no written constitution and, therefore, no *constitutional* position for local government. The national Parliament can make changes to the system as it sees fit. New Zealand's local government went through a major period of reform in the late 1980's. The 1989 Local Government Act defines local government's general responsibilities. As in the UK, the processes of government and public management are at least as interesting as formal relations. The reform movement in New Zealand started with central government and central government agencies. This led to pressure on local government to 'catch up'. The reform of local government within a framework determined by a specially appointed Local Government Commission is the first stage in this.
- 2.3 In **Australia** the State Governments are constitutionally responsible for local government. The Federal constitution sets out this responsibility, and each State decides on the role of local government in its own constitution: any major change would require the constitution to be changed. In recent years this 'constitutional' relationship has been bypassed by strengthening relations between federal government and local government. The Federal government has supported particular initiatives financially. There are also signs of occasional alliance between federal and local government in order to 'squeeze' the states.
- 2.4 The **United States** also has a federal structure. Each State is responsible for local government, and each State has different approaches. Local governments are 'creatures of the States', and the States can therefore change the status of local government although this rarely happens. Alternative routes to enforce change are:
- the use of judicial review,
  - constitutional amendments, and

- a national constitutional convention.

2.5 In **Denmark** the constitutional position of local government, including its relationship to the Parliament, is recognised under the Constitution<sup>5</sup>:

"The right of municipalities to manage their own affairs independently under the supervision of the State shall be laid down in Acts of Parliament".<sup>6</sup>

2.6 Danish Acts of 1967 established three levels of "self-government":

- the State,
- the County (*Amt*) and
- the Municipality (*Kommune*).

2.7 To change the Constitution, or to change the status of local government would require a majority vote in the unicameral Parliament (*Folketing*). However, a vote of more than one-third of its members would ensure that the question has to be put to a national referendum

2.8 **France** also has three levels of local government:

- *Communes*,
- *Départements*
- and *Régions*.

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<sup>5</sup> (1849, revised 1953)

<sup>6</sup> Section .82

2.9 The first two were created immediately after the Revolution, in 1789 and 1790, whilst an act of 1982<sup>7</sup> established the third level of "self-administration". These three levels share the juridical status of "*collectivités territoriales*," created under the Constitution of 1946 and confirmed by that of 1958; they are entitled to

"administer themselves freely by means of elected councils and under the conditions provided by the law"<sup>8</sup>.

Their activities are governed by a Code - the '*code général des collectivités territoriales*'<sup>9</sup>

2.10 Other *administrative* units also exist - '*arrondissements*' and '*cantons*' as sub-divisions of the *départements*; and '*communautés urbaines*', '*districts*' and '*pays*' as agglomerations of small communes in urban and rural areas. But these are not seen as *true* local authorities - even though some of them have directly elected councils, and even taxation powers.

2.11 The position of local government in France is strengthened through case law in the Constitutional Council which establishes the principle that:

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

2.12 France is a unitary Republic and 'no section of the people may take over the exercise of sovereignty'<sup>10</sup>. In theory the Parliament does have the power to regulate local government at will. In practice the French communes and departmental councils have a popular "legitimacy" which few British local authorities would ever claim. Consequently, no government has tried to carry through any of the many proposals to enforce the amalgamation of some of the enormous number of very tiny communes. To dissolve all communes

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<sup>7</sup> - the '*Law on the Rights & Liberties of Communes, Départements & Régions*'

<sup>8</sup> Art.72

<sup>9</sup> Act 96-142 of 21 February 1996.

with fewer than a thousand citizens would remove 29,000 communes, the same number of mayors, and some 300,000 councillors.

- 2.13 In **Germany** the position of local government was guaranteed in the post-World War II provisional Federal constitution (the "**Basic Law**" of 1949)<sup>11</sup>, The role of the communes [*Gemeinden*] and counties [*Kreise*] - is<sup>12</sup> -

"to shape all local affairs according to specific local circumstances and demands within the boundaries of existing law".

- 2.14 In addition to this assurance, every one of the sixteen federal states [*Länder*] has its own constitution and local government law, under which the structure and administration of the local authorities is declared to be a matter for themselves.

- 2.15 Constitutional changes are difficult to achieve at federal level, because of checks and balances built into the 'Basic Law'. They require the approval of two-thirds of the members of *each* of the two chambers - the popularly elected *Bundestag* and the *Länder*-appointed *Bundesrat*.

- 2.16 Changes are not much easier at *Land* level, though they have happened. For instance, some of the *Länder* followed the fashion in the 1960s and 1970s (also followed in the UK) for restructuring to create 'economies of scale'. North-Rhine Westphalia, for example, has a population of about 17-million, but fewer communes than Mecklenburg-West Pomerania, which has a population only one-tenth that size.

- 2.17 **The Netherlands** is a decentralised unitary state. The 1848 Constitution sets out the main rights and responsibilities of local authorities:

1. The powers of provinces and municipalities to regulate and administer their own internal affairs shall be delegated to their administrative organs.

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<sup>10</sup> Art. 3

<sup>11</sup> The Basic Law was designed from the outset to apply to a united Germany

<sup>12</sup> Article 28

2. Provincial and municipal administrative organs may be required by (or pursuant to) an Act of Parliament to provide regulation and administration<sup>13</sup>.
- 2.18 Despite the constitution's protection of local government, the Parliament has the power to restructure local government, it has often done so. It recently created a new Province to embrace a large area of land reclaimed from the former Zuider Zee.
- 2.19 When the Municipalities Act was passed in 1850 there were 1,209 of them: this number was gradually reduced so there are now only 625 Municipalities in the twelve Provinces. Commentators on local government in the Netherlands expect most of the 150 smallest Municipalities to be amalgamated with others. This will raise the average population size of Dutch local authorities from 18,000 to over 25,000 - much larger than anywhere else in Europe outside the United Kingdom and Sweden.
- 2.20 In **Sweden** the constitution of 1974 comprises three enactments. The most important is the *Instrument of Government* in which the first Article reads:
- "All public power in Sweden emanates from the people. The Swedish democracy is founded on freedom of opinion and on universal and equal suffrage and shall be realised through a representative and parliamentary polity and through local self-government ..."
- 2.21 The whole of Sweden is divided into counties and municipalities, which are regulated by a **Local Government Act** of 1977 and by special Acts.
- 2.22 Any change to the constitutional position of local government has to be approved by the unicameral Parliament (*Riksdag*) at two separate sessions with a general election in between them (or, if demanded by at least one-third of the *Riksdag* members, by national referendum after the proposal has received parliamentary approval on the first occasion).
- 2.23 Finally, in **Switzerland**, local authorities (communes) are not mentioned in the constitution of the Confederation. Each *canton* (federal state) is 'sovereign', with its own separate laws relating to its communes. Nevertheless, the communes have an unwritten constitutional

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<sup>13</sup> Article 124

right to exist. This includes their freedom to merge with other communes or to remain independent - a freedom which cannot be withdrawn by the cantons. Communes are sovereign units with the freedom to choose, within the boundaries of cantonal legislation, the appropriate political structure and administration.

- 2.24 Constitutional change appears simple: if demanded at federal level by at least 50,000 citizens, or 8 *cantons*, a referendum *must* be held. Approval has to be by a "double majority" - namely a simple majority of the popular vote *and* a simple majority of the *cantons*. Similar provisions at cantonal level mean that in practice every commune is inviolable unless it *voluntarily* asks for change (e.g. for two excessively small communes to be merged with one another); fear of precedent tends to forbid any possible majority among the communes in the canton in favour of *involuntary* change.

## CHAPTER THREE      DISTRIBUTION OF FUNCTIONS BETWEEN LEVELS OF GOVERNMENT

3.1 This section describes the different functions and powers of the levels of local and regional government in the case study countries. It is divided into two parts. The first deals with the regional level of government, the second with the local level. Consideration is also given to the relationship between the two levels.

### **Regional Government**

3.2 The level of regional government, in **New Zealand** is that of the *Regional Council*. There are 12 Regional Councils, however (as in some of the other case study countries) these are seen as the upper tier of local government rather than a devolved tier of national government. Regional councils are responsible for civil defence (disasters); regional (physical) resource management; transport planning; regional parishes; pollution control and pest control.

3.3 The functions of the regional councils are set out, and delivered within, a statutory framework. As with UK local government, the details vary from service to service: there is no constitutional framework which establishes over-arching principles. Regional Councils have discretion about how they implement their statutory responsibilities (subject to Ministerial guidance or regulation) this discretion traditionally relates to ‘how’ they carry out functions, not to ‘whether’ they carry them out.

3.4 The functions of regional and local councils in New Zealand are distinct and the regional council has no powers over local councils. However, there are number of concurrent functions (e.g. civil defence; physical resource management). Pragmatic accommodation between the levels of government has to be reached in day-to-day relationships rather than through the direction of superior over subordinate.

3.5 In the **Australian** federal system the state governments are responsible for many of the important local services (education, health, etc.). As noted in the previous section, the state constitution describes the functions or powers of local government.

- 3.6 The **USA** is made up of 50 states. All power not specifically given to the federal government is "reserved to the States." The States are generally responsible for such functions as public welfare and health<sup>14</sup>, prisons, higher education, highways, and some policing. Each State has almost complete discretion in the undertaking of its functions (what it does, and how it does it). The major limiting factor to this discretion are the rights given to citizens, the powers given to Federal institutions in the Constitution, and any limitations accepted by the States themselves. In theory, the power of the States to control local government is absolute. In practice States only legislate when local government is perceived to be failing in a particular instance, e.g. a failing school system.
- 3.7 The sub-national system in **Denmark** is based on 14 Counties. The Danes do not consider the counties to be "local" government. The Counties have, in principle, powers of general competence. In practice they perform very few functions not specifically allocated to them. The functions of the Counties are those best dealt with on a regional basis and which are too comprehensive to be handled by a local authority.
- 3.8 The principal county functions are: provision of hospitals, curative health services, ambulances, post-16 secondary education, social welfare of the disabled, regional planning, countryside and environmental conservation, construction and maintenance of highways, and public transport.
- 3.9 The relationship between the levels of government is based on the principle that the counties and local authorities *themselves* decide how their administrations should work and how tasks should be carried out. This principle is balanced by the ultimate responsibility of Parliament and the government.
- 3.10 Consequently, each individual Minister has a general supervisory function for his or her administrative responsibility. County supervisory committees, and the Ministry of the Interior, can require reports or plans from local authorities (depending on the service/activity in question). They are able to *stop* local authority practices, but not to impose practices. They can also cancel local decisions which conflict with the law, and fine local authorities

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<sup>14</sup> Contrary to popular belief, health care in the USA is provided, funded, and regulated by a mixture of

- 3.11 The Counties have legislative powers to make enforceable orders and regulations in the interest of local inhabitants, even without a statutory basis, provided these do not restrict the liberty of citizens.
- 3.12 In **France** the *Département* is headed by a central government appointee, the Prefect<sup>15</sup> (*Préfet*). The *Départements* were created as an instrument for *central* government's field administration, and to supervise the activities of the *Communes*. The later *Régions* were also created for the central administration's convenience. The 1982 reforms re-created both *Départements* and *Régions* as democratically controlled local authorities. All three levels (including *Communes*) enjoy 'territorial competence' which empowers every local government "to settle any matter within its territorial jurisdiction, provided it is not devolved by the law upon another authority". This gives great flexibility, but also results in competition, because parallel powers are exercised at the three levels of administration.
- 3.13 In practice the 22 *Régions* are largely facilitating bodies: they provide a framework and support for the smaller local governments. They do have important specific powers over *regional planning and development* in such fields as housing, transport, and institutions for secondary and higher education.
- 3.14 The 96 *Départements* have general competence to perform any tasks which cannot be performed by their constituent *Communes*. Functions beyond the capabilities of the communes have tended to move gradually upwards to departmental level for resource reasons - often without specific legal sanction. Changes in the law have effected this for education, social assistance, and roads.
- 3.15 Until 1982 the Prefect had important powers of 'tutelage' (*tutelle*) over the *Communes*. Currently neither the *Région* nor the *Département* have regulatory powers regarding lower authorities - that would imply a *tutelage* relationship of one elected local authority upon another one, something which is now forbidden by law.
- 3.16 In **Germany** the six largest *Länder* have decentralised their own activities to administrative districts [*Regierungsbezirken*]; these have duties of co-ordination, and

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private, federal, State, municipal, and not-for-profit organisations and agencies. There is considerable difference between the States

provide field offices for education, police, forestry, finance and other services. However, they are *not* "local government".

- 3.17 In all *Länder* (except the three city-states - Hamburg, Bremen and Berlin), the *Gemeinden* (excluding 117 cities/county-boroughs' [*Kreisfreie Städte*]) are grouped in 426 counties [*Landkreise*] which *are* considered to be local government, with its autonomous status.
- 3.18 There are numerous other co-ordinating local government institutions, but none of them enjoy the autonomy of local government. For example, in some *Länder* local authorities may voluntarily co-operate in joint-action corporations [*Zweckverbände*] to organise together one or more of their functions, such as fire services or waste disposal. But *responsibility* for those services still resides with each of the co-operating authorities.
- 3.19 The *Länder* are sovereign and may pass laws in all fields other than those specifically allocated to the federal level (e.g. foreign affairs, postal services, railways, waterways and shipping). The *Landkreise* share their constituent communes' powers of general competence and, like all other local authorities, may make enforceable orders and regulations (with the status of substantive law) which are binding on all citizens provided that no federal or *Land* laws override them. Statutory authorisation may be required if the local government bye-laws impose "unusual burdens" on citizens.
- 3.20 Because of Germany's federal constitution the allocation of functions varies from one *Land* to another, and tends to be quite complex. In general terms:
- **Education** is a matter for the *Land*; but (apart from appointment of teachers, curriculum, and teaching practices), virtually all aspects of school management and maintenance are devolved to the local authorities.
  - Maintenance of the federal **autobahns** and *Land* major **roads**, as well as **traffic management** is devolved to *Landkreise* or to the larger *Gemeinden*.

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<sup>15</sup> A reminder of the influence of history is that the Danish Counties are also headed by a government appointed Prefect.

- **Hospitals** are a responsibility for the *Land*, but more often than not are provided by *Landkreise* or *Kreisfreie Städte* or by other local authorities through *Zweckverbände* or similar joint agencies, with subsidies from both federal and state levels.
- **Police**, and **public safety and rescue** services are often delegated to the *Gemeinden* and *Landkreise* - which also have primary responsibility for **law and order**,
- *Landkreise* are also responsible for **markets**, and **pricing of goods for sale**.

3.21 In the **Netherlands** there are 12 *Provinces* (not considered to be "local government"). In addition, because of the specific nature and history of the Netherlands, the country is still covered by 35 successors of the ancient elected Water Boards. Because of their strictly geographical catchment areas these vary in size, with borders which are often not coterminous with those of ordinary local governments. Within its own territory each Water Board is entitled to make regulations and to levy taxes. It is answerable to the relevant Provincial Executive, by which its accounts and budget must be approved. Many local authorities are shareholders.

3.22 In principle the Provinces have powers of general competence, but in practice perform very few functions not specifically allocated to them. These direct provincial responsibilities include direction of civil defence, *disposal* of refuse, preparation of framework outlines for regional town and country planning, and the construction and maintenance of a few major roads. Otherwise their functions are primarily supervisory.

3.23 The Province has no legislative power over the local authorities within its area, except that town and country planning by the municipality is required to be consistent with the Province's framework outlines. Like the Danish counties, however, the Dutch Province does have general legislative powers. It can make enforceable orders and regulations in relation to its direct responsibilities.

3.24 In **Sweden** there are 24 Counties (*Län*) which are the basis of both the elected county councils (*landsting*), and of county administrative boards (*länsstyrelse*) of *central* government. The County councils have powers of general competence, but again in practice, perform few functions not specifically allocated to them. Their role is to fulfil

interests of the community which are beyond the capacity of the primary authorities in their area. The creation of larger municipalities in the 1974 restructuring actually left very few functions 'beyond the capacity' of the primary authorities.

- 3.25 By far the most important county functions are in the fields of health care and medical services (including training for these and other vocational fields). They also subsidise cultural and tourist activities; and they share with the State's field administration responsibility for regional economic development. The central government field administration - the county administrative board - is responsible for direct regional planning, police, the administration of justice, labour and employment, conservation of nature, water and the environment, preventive health and safety inspection, civil defence, and roads and traffic.
- 3.26 The county *council* has neither legislative nor supervisory power over the local authorities within its area. The county *administrative board* may, however, exercise supervision to ensure that both county and municipal councils fulfil obligations imposed on them by statute.
- 3.27 Counties may make enforceable bye-laws and regulations to implement their responsibilities. Appeals lie to the administrative courts and to the Ombudsman.
- 3.28 In **Switzerland** there are 26 Cantons, which are the 'states' of the Confederation. Most of the larger cantons have grouped their local authorities in administrative districts: but neither cantons nor districts are "local government". The cantons have 'sovereignty' in matters not specifically entrusted by law to the federal level (e.g. foreign affairs, defence, currency, post office, railways, aviation). They have exclusive legislative power as regards the police and church matters, and share power with the federation as regards water power, highways, trade and industry, secondary and higher education, and taxation. They are also required to implement federal legislation in relation to criminal and civil law, social security, agriculture, and environmental protection.
- 3.29 The canton has legislative and supervisory powers over its constituent local authorities *only* concerning matters within its own competence (e.g. police) or its implementation of federal legislation (e.g. on environmental conservation, or social security). However, the smallest communes entrust execution of many of their own functions to the cantonal level.

## Local authorities

- 3.30 In **New Zealand** the local authorities operate with functions determined by national legislation. There is, however, a lively current debate in New Zealand about the community governance/leadership role of local authorities. A number of councils, for example, have attempted to develop local strategies for education and health. Neither function is part of local government - the councils were gathering together key players with the intent of influencing and shaping local affairs.
- 3.31 Local councils' specific responsibilities are for civil defence (disaster response etc.); physical infrastructure; building regulation; local roads and transport; traffic management; pre-school education; public housing; community facilities; local museums; recreation facilities; dog control; and business promotion.
- 3.32 Like the Regional Councils, the local authorities undertake functions defined in statute. *How* they carry out these functions, however, is at each council's discretion. Ministers and central departments are able to influence the situation by regulation and informal pressure. It is worth noting that the scale of New Zealand (population under 4 million and 70 local authorities) means that personal contacts and informal influence can be as powerful as formal structures.
- 3.33 In **Australia** the powers of local authorities vary from state to state. In Western Australia for example, there is a power of general competence; in Victoria there is not. Although there are variations between the states, the principle local authority functions are common to most authorities. They are roads, local recreation facilities, local environmental health matters, local planning, and community development. As in New Zealand and the UK there is lively debate about community governance and community leadership. The exact functions for each authority are prescribed by state statute. Within the statute and subsequent ministerial regulation and direction, there is considerable discretion over *how* functions are provided.
- 3.34 Local authorities in the **USA** do not enjoy a 'power of general competence'. Most local governments have their powers prescribed in a charter of incorporation. Over half the states recognise "home rule" charters which allow municipalities the opportunity to draft their

own charters within state guidelines and to exercise broad discretionary authority. Most large cities in the US are governed under home rule charters.

- 3.35 As in Australia, the detailed responsibilities of local government are set by the States, though again there are common features. Local government is usually responsible for personal and social services, schools, fire and police protection, housing and urban renewal, and public health and hospitals.
- 3.36 In **Denmark** 275 local authorities (municipalities) have powers of general competence to undertake anything in the interest of their local inhabitants, provided that this action is not prohibited (e.g. by being allocated to another institution or to another level of government) and provided it does not restrict citizen liberty.
- 3.37 The principal functions of Danish local authorities include social welfare (pensions, maternity and child benefits, sickness and unemployment benefits, rent subsidies), preventive health, comprehensive education (ages 7-16) for over 90% of children, nurseries and pre-schooling, day centres, care of the elderly, local planning and enforcement, construction and maintenance of local roads and streets, fire services, markets, public libraries, parks, water supply, waste water treatment, refuse collection and disposal, administration and collection of income and land taxes.
- 3.38 They also have discretion to subsidise the arts or uneconomic public transport services, to run music schools, sports grounds and swimming pools,, and to give advances or guarantee loans for social housing associations. Although they may buy and service land for use by industry and commerce, and use taxes and other incentives to attract businesses, they may not *themselves* undertake activities "belonging to the private sector" - in particular trading and enterprise. Municipal utilities *are* permitted provided that they are likely to be self-financing (but non-profitmaking), at least in the long term.
- 3.39 In **France** the *'code général'* entrusts the *Communes* with certain mandatory functions (*compétences obligatoires*). The principal ones are school buildings, fire, police, preventive health, land use planning, road maintenance, and some social welfare benefits. Otherwise, as noted above, all levels of local government enjoy 'territorial competence' - first granted to the *Communes* in the Municipal Act of 1884. The major discretionary functions

exercised by the communes relate to culture and tourism, social assistance, and aid to industry.

- 3.40 In practice, because of the very small size of the majority of communes (90% have fewer than 2,000 inhabitants) they have been obliged - often by fiscal pressure from the State - to join together in a multiplicity of joint organisations in order to preserve their local autonomy. About 900 of these joint organisations are vested with powers of taxation. There are now nearly 15,000 *single-purpose* syndicates for such functions as schools; transport; water, electricity, and gas supply; flood control; and even funeral services. The 3,000 *multi-purpose* organisations include some very significant agencies, such as the *communautés urbaines* which now embrace eleven of the major conurbations, including Lille, Lyon, Strasbourg, and Bordeaux,.
- 3.41 In **Germany** there are over 16,000 communes (the great majority of them in the former DDR and the two southern *Länder* - Bavaria and Baden-Württemberg). They all have powers of general competence to undertake anything in the interest of their local inhabitants, provided that this is not prohibited (e.g. by having been allocated to another level of government or to another agency) and provided it does not interfere with the liberty of the citizens.
- 3.42 The principal functions of local authorities (variously assigned, depending on the *Land*, to the county, the county-borough and/or the commune) include:
- **Social Housing** - generally through co-operatives or non-profitmaking companies owned by the *Gemeinde* (which usually provides and prepares the land);
  - Local **passenger transport**, including buses, tramways and air fields - also through jointly-owned, and subsidised, private law companies;
  - **Cultural activities**, and libraries, museums and archives, recreation and sport, ice rinks, swimming pools, youth hostels, forest, jogging and rambling paths, and so on are all provided or subsidised by all levels of local authority;
  - **Public utilities:** water, sewerage, drainage, abattoirs, waste collection and disposal, cemeteries and crematoria, electricity, district heating and gas services

are all provided by *Landkreise* or larger *Gemeinden* - often through jointly-owned private law companies.

3.43 No direct investment in private sector enterprise is permitted, but promotional and supportive activities for **tourism**, and **development** of the local economy and employment are ubiquitous.

3.44 **Regulatory** responsibilities of local government include

- (*Landkreise*) land registration and survey, nature protection, and veterinary services;
- (*Gemeinden*) inspection of schools, supervision of commerce and working conditions, environmental protection, and agricultural field controls.

Local authorities in Germany also provide savings and loans banks, local health insurance, the management of federal railway stations, post offices, and branch employment and customs offices (these are separately budgeted for).

3.45 In **the Netherlands** there are 625 local authorities (municipalities), for which everything that is not forbidden is permitted. The local government bodies have general competence, and enjoy guaranteed autonomy to do anything they choose in the general interest of their inhabitants, *unless* those powers have been specifically allocated to another agency or level of government.

3.46 Dutch municipalities provide numerous services both "autonomously" and as agents or "co-administrators" with central government. Examples of autonomous tasks are the care of roads and streets, cultural activities, and rubbish collection; examples of co-administration include primary and secondary education, housing, social care, planning and environmental protection. There is an increasing emphasis on the privatisation of service provision.

3.47 The municipalities' direct functions are numerous:

- Education at all levels below university (and there are even a few municipal universities).
- Housing, town planning, and urban renewal.
- Cultural buildings and activities.
- Urban buses and light rail transport.
- Fire protection.
- Seaports and inland waterways
- Refuse collection,
- Primary health care, and municipal hospitals
- Social welfare
- Markets
- District heating schemes, gas supplies,
- Swimming pools and sporting facilities, parks and open spaces.

Some of the larger towns even have their own police forces, although the rest of the country is covered by the national police.

3.48 **Swedish** local government has undergone almost as many changes as UK local government. There are 284 municipalities (a dramatic reduction from well over 2,000 in 1950). In the 1980s the seven largest local authorities were re-divided into smaller units as they were considered 'too big'. Municipalities have powers of general competence to undertake anything in the interest of their local inhabitants, provided that this action is not prohibited (e.g. by being allocated to another institution or to another level of government) and provided it does not encroach on the rights of individuals and is not basically oppressive.

3.49 The principal functions of municipalities include:

- comprehensive schooling for all children (ages 7-16), pre-schooling, upper secondary schools, much adult education;
- land use, development and building controls;
- street construction and maintenance;
- libraries;
- sports facilities, ice rinks and public baths;
- fire protection;
- water services, sewerage and sanitation;
- gas and electricity supplies, town heating;
- abattoirs;
- refuse collection and disposal;
- sheltered housing and care of the elderly and disabled.

3.50 The municipalities *promote* residential provision by special municipal housing bodies, and subsidise theatres, museums, art galleries, and various voluntary associations. Jointly with the county councils they participate in authorities responsible for local public transport. They may stimulate local economic development, but may not directly subsidise any individual commercial or industrial enterprise (although support may be given in various ways if closure or cut-backs will result in serious local unemployment).

- 3.51 The 2,600-odd parishes of the established Evangelical/Lutheran Church have the same status in public law as municipalities. They are entitled to manage their own affairs, and have independent powers of taxation for such public functions as civil registration, funerals, and the maintenance of cemeteries.
- 3.52 In **Switzerland**, the 3,000-odd Communes have freedom to act in all matters which are not specifically in the competence of the cantons or the federation; *and those actions cannot be overruled by either of the higher levels*. The Federal Supreme Court upholds this autonomy as a fundamental right.
- 3.53 The communes determine their own organisation and financial management. In all but the smallest, an executive board (*Rat / Conseil / Municipio*) of 3-9 members administers all municipal property; and organises (with a significant voluntary input by citizens):
- the maintenance of law and order, civil defence,
  - local roads and traffic police, fire prevention,
  - health and hygiene,
  - building controls,
  - local planning,
  - public utilities, public works, local transport, water purification and supply, waste collection and disposal,
  - business regulations,
  - adult education, sport and cultural activities, and
  - local taxation (including income tax).

3.54 Some larger communes engage in such activities as the operation of municipal banks, dairies, hotels, laundries, or vineyards. Separate *school communes* manage the provision of primary and secondary schools and the appointment of teachers; and in some cantons there are also separate *water-management communes*.

### **Relationships between authorities**

3.55 In **New Zealand** there is no *designed* common membership between regional and local councils: there are no *ex officio* posts at either level. There are informal conventions which militate against common membership of local and regional councils.

3.56 The New Zealand Local Government Association provides a network for communication between authorities. There are sub-national groupings within the Association. Within a regional area there are formal meetings for co-ordination between regional and local councils on matters of common interest. The extent to which these are successful depends on personal relationships, inevitably there are examples of very good relationships and examples of very poor ones. Given that there are strong mutual interests between the two levels of government and scope for policy rivalry this is not surprising. There is no formal requirement for good co-operation.

3.57 In **Australia** the convention is not to have dual membership of state and local government.

3.58 There are state local government associations (which are, in turn, members of a federal association of local government - which is recognised by the federal government through a concordat whose working mechanism is a partnership council). State associations of local government are supplemented by informal local groupings, particularly in the metropolitan areas.

3.59 In the **USA** there are no designed, or *ex-officio*, links between local and State government. Many local charters forbid local representatives from participation in the state government.

- 3.60 Each type of authority has its own association, such as the National Association of Towns and Townships, the American Association of Port Authorities, or the National League of Cities. There are other more functional type associations such as the U.S. Conference on Mayors. Most of the national associations also organise on a State-wide basis such as the State Municipal Leagues. There are also more localised Councils of Governments (COG) in metropolitan areas composed of representatives from the counties and larger municipalities. Up to half the states have established *intergovernmental advisory commissions* to promote smoother co-operation between the states and their local government.
- 3.61 In **Denmark**, whilst not formally prohibited, councillors' work-loads virtually forbid their being members at more than one level; there are a few councillor Members of Parliament, but most political parties do not allow this. It is generally recognised by observers that there are 'communities' of professional and individual service interests between local government and central departments. It is common, for example, for Ministries to ask local officials to draft legislation, national regulations, and circulars.
- 3.62 County/local authority interrelationships exist, notably through *municipal centres* which provide 'one-stop-shop' access to integrated health and social services. Library services must also be co-ordinated.
- 3.63 Primarily for economic purposes (chiefly to negotiate on levels of expenditure and related matters) a government/local authority liaison committee exists, comprising ministers, the chairmen of the municipal and county council associations, and the mayors of Copenhagen and Frederiksberg.
- 3.64 In **France**, the traditional '*cumul des mandats*' - by which politicians sought to get themselves elected to bodies at almost every level - has been modified so that politicians cannot hold more than two elected posts. Most national politicians choose to have their second post as Mayors (or Deputy Mayors) of their home commune - few choose elected posts at other sub-national levels. At the other levels, too, it is usual

for ambitious politicians to seek election either to the departmental or to the regional council, but not to both, for fear of losing their local base.

- 3.65 Because the three levels have parallel powers (except where the law prescribes sole competence) there is pressure for the three levels to co-operate both in planning and execution. Generally the départements vie to represent in the regional councils the interests of the small communes, the great majority of which have no local leaders to represent them, particularly against the strong representation of the large cities. The untidiness of the system contradicts the principles of clarity of function and accountability. Nevertheless it ties interests together from top to bottom of the governmental ladder in networks of communication and influence.
- 3.66 In **Germany** many members of *Land* parliaments are also local councillors; and many members of the *Bundestag* began their political careers in the council of their home *Gemeinde* . There is no bar to public officials engaging in politics.
- 3.67 The *de jure* separation of powers between territorial levels is countered by a *de facto* intertwining of activities and a high degree of interdependence between the Bund, Länder and local government, and between them and other sectoral interests. Political influence is exercised in practice more upwards than downwards. The higher levels recognise the importance of local government in implementing most important domestic legislation - this compels the central authorities (at *Land* or federal level) to co-operate and bargain with local government.
- 3.68 In the **Netherlands** councillors are very seldom elected at more than one level, and most political parties would discourage this.
- 3.69 The **Dutch** intergovernmental system weaves together the responsibilities of the various authorities. There are regular contacts between the bodies involved in the implementation of policy. Communications are simple in such a compact country, and the executives at each level of government are in constant contact with one another.

- 3.70 In **Sweden** councillors' work-loads make it difficult to be members at more than one level. Nevertheless, a municipal councillor *may* also be a member of his municipality's executive board, a member of the county council, a managing director of a public housing company, and a participant in one or more urban study commissions set up by the central government. About 80% of members of parliament have served as local councillors: indeed, observers argue that local government issues "*are the life-blood of the national parties*".
- 3.71 The relationship between state and local authorities is characterised by common endeavour to promote the best interests of the citizens, This means that the *de facto* division of activities between levels , and between authorities at the same level, is constantly shifting through co-operation and mutual dependence.
- 3.72 In **Switzerland** common membership of assemblies at different levels is usual, whether by politicians *or civil servants*. Swiss politics is dominated by balance: ensuring that no one unit (*canton or commune*) has more than its share of representatives, and that every significant linguistic, religious, or other minority is duly reflected.
- 3.73 Overlapping membership of the different assemblies, common responsibility for many functions, and inter-authority financial transfers mean that both at federal/cantonal level and at cantonal/communal level there is a constant flow of communication in both directions.

## CHAPTER FOUR RELATIONSHIPS OF ACCOUNTABILITY

**Can higher levels override the decisions of, direct the action of, or intervene in the operation of local authorities?**

- 4.1 In **New Zealand** the regional councils do not have the power to override the decisions of local government. Local planning responsibilities, though, are conducted within a framework of regional resource (environmental) strategies and policies. In so far as both local and regional councils are the creature of national Parliament and operate within the English Common Law doctrine of *ultra vires*, national government and the courts are in the position to override decisions.
- 4.2 Regional councils do not have a power of direction. Within the framework of national legislation, however, ministers and central departments *are* able to issue directions. As might be expected, the central-local relationship is a complex one. The New Zealand Local Government Commission (established to preside over the structural reform of local government) has a continuing interest in local authorities' internal structures as well as their boundaries. Internal political structures have to be approved by the Commission, and there have been *causes celebre* when proposals have been rejected.
- 4.3 Where central government intervenes it tends to be informal rather than formal. The scale of the New Zealand system lends itself to intimate knowledge on the part of the centre about what is going on.
- 4.4 In **Australia** the position varies from state to state. For the most part, local authorities have autonomous decision-making powers within their spheres of responsibility. In the past few years, most of the state governments have been engaged in a local government reform process in which they have directed local authorities into new ways of working (new management structures, amalgamations, competitive tendering, etc.).

- 4.5 All state governments have the power to intervene in the running of local authorities. They can dispense with elected local councils and replace them by state appointed commissioners. For example, in Richmond, Victoria this has happened on a number of occasions. Recently, commissioners were sent into Sydney to deal with suspected corruption. This power of the state to intervene creates a real tension between state and local government.
- 4.6 In the **United States** there are channels for State governments to overturn local government decisions. To do this (mainly when a local government has made a decision for which it has no constitutional authority) the State has to take action through the State Supreme Court through an action for judicial review. In 1982, for example, the Supreme Court of Colorado ruled that the City of Boulder had no right to regulate cable television.
- 4.7 States can also direct local governments to carry out an action. Again this is usually enforced through the courts, though there may be occasions when Departments of the State Government can take action - when they hold the budget, or when they have prior legal backing, or a local authority is not fulfilling its constitutional obligations: school de-segregation cases in 1960's being a prime example.
- 4.8 In **Denmark** the central government has a *residual* responsibility to supervise local authorities. This power is exercised very narrowly, applying principally to the *legality* of local decisions, standing orders, working arrangements with other bodies, and budgeting and accounting guidelines.
- 4.9 The supervisory authority vests in the Minister of the Interior for county councils, and in 'county supervisory committees' for the local authorities. These committees comprise a centrally appointed chair - the county prefect (*Amtmand*) - and four councillors elected by and from the members of the county council (but *not* acting as 'representatives' of that council). These supervisory authorities may annul decisions as illegal, or fine councillors until obligations are fulfilled: but use of these powers is extremely rare. Final authority lies with the courts.

- 4.10 In **France** all directly elected authorities are deemed to "*participate in the exercise of sovereignty under the national administration headed by the President*". The Mayor of a commune, although directly elected, is in law the delegate of the State. Mayors are vested with responsibility for general security and the implementation of national policy, and for such national tasks as census; electoral rolls and the organisation of elections; dossiers of social aid; issue of hunting permits, etc. The mayor and the deputy mayors (*adjoints*) are also *ex-officio* officers of the judicial police. The Ministry of the Interior exercises control through general directorates for local authorities and for law and order.
- 4.11 However, because of the intricate political channels of influence, central controls are exercised with considerable sensitivity to local interests. Advice and support is channelled through the respective prefects to the elected departmental and regional council presidents and the mayors of large cities. Although the *Préfets* have lost their powers of *tutelle*, they preserve the right to refer any local authority decision to an administrative tribunal: but most of them prefer to work by persuasion. The *Préfet* of a *département* is obliged to comply with guidance issued by the *Préfet* of the *région*.
- 4.12 Control of financial decisions (or non-decisions) is exercised by regional accounting tribunals (*chambres régionales de comptes*). If any local authority declines to implement the recommendations of such a *chambre régionale* the prefect is empowered to intervene and enforce them, subject to judicial review by the administrative courts.
- 4.13 In **Germany** the superior levels of government may intervene directly only if a local authority fails in duties delegated to it - in which case that higher level can take back responsibility. Within the spheres of competence of each level only resident citizens can protest, taking their objections to the courts. However, there has been a strong tendency at *Land* level - in response to citizen pressure - to add to the obligatory and delegated functions of local authorities, accompanied by detailed instructions and regulations. The objective has been to achieve uniformity of practice.

- 4.14 In **the Netherlands** bye-laws relating to municipal *taxes* must be approved by central government. Moreover, municipal bye-laws, budgets and financial transactions, and any resolutions binding on citizens are subject to review by the Provincial Executive, which may refer them to central government if it considers that a municipality has exceeded its *legal* powers; 'the Crown' must decide within thirty days whether or not to nullify the municipal decision. If no illegality is apparent, the Province may only *advise* changes, which the municipality is free to ignore.
- 4.15 In very rare and exceptional circumstances, if the Government considers that a local authority has neglected its lawful tasks or has acted contrary to public interest, it can request Parliament to dismiss the municipal council and replace it temporarily - normally until the next routine elections - by a nationally appointed commissioner.
- 4.16 In **Sweden** it has long been national policy to limit the role of central government departments to national policy-making and the allocation of resources, so that central ministries are remarkably small.
- 4.17 The State, however, is represented very strongly at county level by the *länsstyrelse*, although they have a collaborative rather than a controlling role in relation to local authorities. Moreover, there is a complex intertwining of responsibilities which makes divisions of authority very hard to define. Laws and regulations define minimum standards of service at each level, and central government issues directives about their administration.
- 4.18 In **Switzerland** the constitution prevents any over-riding of, or intervention in, the activities of the communes.

#### **Electoral arrangements at different levels of government**

- 4.19 In **New Zealand** national elections are held every three years. There is a mixed system of first past the-post constituency-based election and top-up via proportional voting. There are 65 constituency seats (60 geographical constituencies and 5 Maori). Another

55 MPs are elected via a list system. Turnout is high. There have been major reforms in the conduct of elections with easy access to postal voting. Turnout for national elections is around 80%.

- 4.20 Regional elections are held every three years. The voting system is first-past-the-post, each councillor representing a geographical constituency. Turnout is lower and observers argue that there is less identification between voters and the regions.
- 4.21 Local council elections are held every three years. Again, the system is first-past-the-post, with councillors representing geographical divisions. A Private Member's Bill before Parliament last year to introduce proportional representation into local government was withdrawn for technical reasons. It is expected that the government will introduce proportional representation in local government in the next year or so (in time for the 2001 local elections). Turnout has increased since postal voting was made easier, averaging over 50% (with over 60% for the election of mayors).
- 4.22 An additional elected layer in New Zealand ('below' the local authority) is the *Community Board*. These are created by local authorities. In most cases they have been set up to replace smaller local councils which were abolished through reorganisation. Most Community Boards are consultative mechanisms. However, in some cases (notably Christchurch) they have delegated budgets and responsibilities. Christchurch, a city of 300,000 people, has six Community Boards.
- 4.23 In **Australia** elections for the three levels of government are all on three-year cycles with the cycles staggered. Voting in Federal and State elections is compulsory.
- 4.24 In the **USA** the arrangements for national elections are prescribed by the Federal Constitution. The president and vice-president of the United States are elected every four years. Members of the US senate are elected every six years with one-third of the senate being re-elected every two years. All members of the US House of Representatives are elected every two years.

- 4.25 Voting is based on the first-past-the-post system and turnout varies depending on the electoral cycle. In presidential election years, turnout is usually between 55-65 per cent. In non-presidential election years, turnout can fall to 35-45 per cent often depending on which state offices are being contested.
- 4.26 Many of the key state offices are subject to election. These include Governor, Deputy Governor, Attorney General, Secretary of State, and Auditor. Some states also elect state comptrollers while others elect judges and representatives on state boards of higher education.
- 4.27 Local elections vary enormously both between and within states, there are elected office holders in councils, school boards and special districts<sup>16</sup>. Terms of office vary between one year to six years. The range of positions which are locally elected vary enormously but include local councillors, county commissioners, mayors, clerks, county sheriffs, auditors, states' attorney's, and in some instances local judges.
- 4.28 The voting system is first-past-the-post. Turnout ranges from a low of 25 per cent off years to 35-40 per cent in presidential and state office election years.
- 4.29 A peculiar feature of US local elections is that many states decree that they are non-partisan. Nearly  $\frac{3}{4}$  of cities with more than 2,500 inhabitants have non-partisan elections. Even in those states where there is local partisan politics, the primaries of each party are so open that more or less anyone can vote in them.
- 4.30 Another feature, which varies between states, are the mechanisms for *direct democracy*. These include the New England Town Meeting, referenda, the initiative, the recall, and charter drafting committees.
- 4.31 **Denmark** has had proportional representation at all levels of government since 1924. The *Folketing* is elected for a term of 4 years, but an election may be called at any time. Turn-out normally exceeds 80%.

- 4.32 All county and municipal elections take place once every four years on the same day in November and the new councils (of 7 to 31 members) take office the following 1st January. The 18-year suffrage extends to foreigners in residence for three years or more. Local authority employees may be elected to a council, but may not sit on the finance committee, nor on any committees connected with their work.
- 4.33 Electors can vote for an individual or for a party list (to which the vote is transferred if the individual is not elected): the lists are for the whole local authority area, undivided by wards. Financial assistance is given to party groups on the basis of votes received. Turn-out is seldom lower than 85%.
- 4.34 In **France** it is theoretically possible that, within the course of six years there can be two municipal and two regional elections for the six-year terms of those councils, two five-yearly elections to the National Assembly, two three-yearly direct departmental elections (each for half the council), two three-yearly indirect elections to the Senate, two five-yearly elections to European Parliament, and an election for the seven-year Presidency. Voter fatigue is understandable, and is exacerbated by the frequent changes of electoral system, and by the differences between those used at different levels.
- 4.35 Currently the national elections are by simple majority, in two rounds. This system is also used in departmental elections. Regional councils and communes of over 3,500 inhabitants have an election by lists in two rounds by proportional representation. Smaller communes have a party (or group) list system, also proportional. However, if the population numbers less than 2,500, individuals may be put forward for election in addition to the party lists.
- 4.36 In **Germany** the Federal Assembly [*Bundestag*] is elected for a term of four years. The electoral system combines relative-majority and proportional voting. Each voter has two votes, the first for the direct constituency representative, the second for the

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<sup>16</sup> Special Districts have grown in the USA as an attempt to counter the fragmentation of local

competing party lists: this second vote determines each party's share of seats over and above the constituency representatives; but to be represented at all, a party must gain 5% of all the votes cast.

- 4.37 The Federal Council [*Bundesrat*] is elected by the governments of the 16 *Länder* in proportions determined by the number of their inhabitants.
- 4.38 Under the **Basic Law** in every *Gemeinde* and every *Kreis* (as well as in every *Land*) the people must be represented by a body chosen in general, free, direct, equal and secret elections. The system adopted is up to the *Land* to decide, but is normally similar to the system used for the election of the *Bundestag* - except that there are often modifications to ensure that significant minorities or areas are not left unrepresented. Turn-out is rarely as high as in Scandinavia, but seldom falls below 70%; anything as low as 50% is considered to be a disgrace. Lengths of electoral term vary: in most of the *Länder* it is four years, but in some it is five, and in Bavaria six years. Financial assistance and office accommodation is given by the local authorities to their party groups.
- 4.39 National elections in the **Netherlands** are 4-yearly by proportional representation with party lists. There are no constituencies - voting is nation-wide. Turn-out normally exceeds 80%.
- 4.40 All provincial and municipal elections take place every four years, but separately from the national elections (although the same voting system is used, and the lists are for the whole area, undivided by wards). The 18-year suffrage extends to foreigners in residence for three years or more. Local authority employees may not be elected to a council within the area where they work, but may in their municipality of residence (if it is different). Turn-out is seldom lower than 85%, although the former legal obligation to attend the polling station has been abolished.

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governance: they bring activities together on a geographical basis.

- 4.41 At all levels of government **Sweden** has proportional representation, voters may cross out names on a party list, but a candidate is excluded only if at least half the voters do this. The *Riksdag* is elected for a term of three years, and turn-out usually exceeds 90%.
- 4.42 Since 1967 all county and municipal elections have taken place once every three years on the same day as the national elections: but there has been great pressure to increase terms to four years, and to separate the local elections, holding county and municipal elections halfway through the term of the *Riksdag*. Turn-out appears a little less than the 90+% of the *Riksdag* elections, because of abstention by many resident foreigners, who are enfranchised for local elections but not for national ones.
- 4.43 In **Switzerland**, since 1919, the Federal Assembly (*'Nationalrat'*) has been elected by proportional representation every 4 years. Each canton and half-canton decides its own electoral system for its members of the Senate (*'Ständerat'*). The Federal Assembly and Senate in joint session appoint the seven-member Federal Council (*'Bundesrat'*) one of whose members - usually the previous Vice-President - is elected each year by the Federal Assembly to be President. Members of the Federal Council may not hold any other office in the Confederation nor in the cantons. Each holds a 'portfolio', but the Council acts as a collegiate body.
- 4.44 Every canton and every commune can decide its frequency of elections and can choose its own electoral system. Often this is similar to the federal system, although there are innumerable variations. In most of the 3,000-odd Communes - and even in a few small Cantons - *all* the qualified voters are *required* to attend the annual assembly, at which *everyone* takes a personal oath of responsibility for community services; and by show of hands the entire electoral community decides on major policies (*new bye-laws; budget; tax rates; raising of loans; purchase or sale of land; co-operation with neighbouring communes, with the canton, and with other bodies; &c*); all the voters also elect a *board of management* (usually for a 4-year term). Only the largest communes (10,000+) elect councils to carry out these *policy-making* tasks.

4.45 In communes where these annual assemblies do not take place, turn-out at any level for any election is erratic and often may be very low, 25% or less, except in a few cantons and local authorities where voting has been made compulsory. This apathy is because political party platforms tend not to differ radically, whilst in any case controversial legislation is likely to be the subject of a separate referendum or initiative. Participation is also affected by a plethora of elections: a resident of Zurich has the privilege of electing the *Nationalräte* (members of the Federal Assembly) from the Canton Zürich, two members to represent the canton in the *Ständerat*, members of the cantonal parliament, members of the city parliament, members of the city executive council, district councillors, magistrates and prosecutors, members of the district school board, arbitration magistrates, a notary public, secondary and primary school teachers, and so on. In addition there are likely to be three or four national referenda every year, and numerous cantonal ones.

### **Elected Mayors**

4.46 Local councils in New Zealand have elected mayors. They are elected 'at large' and therefore have separate mandates. They are elected at the same time as the local councils. They have no executive authority and are, in a real sense, elected as *civic leaders*. It is important to note that the elected mayor works alongside a *powerful chief executive*. That is to say, the chief executive has delegated executive authority. The local council's *sole* employee is the chief executive - he/she then employ the rest of the staff (or contractors).

4.47 The elected mayors, despite the lack of formal executive power, accrue considerable personal power and authority. Party politics is weak or absent in most councils and mayors often have to build an effective coalition or consensus to ensure the council is effective. There is a strong lobby for mayors to be given executive power.

4.48 Whether local councils have elected mayors in Australia is a matter for the state government. In New South Wales recent reforms have provided the *option* of elected mayors.

- 4.49 In Denmark The full-time, salaried and pensionable Mayor (*borgmester*) is elected by the council for its 4-year term, he or she has no separate mandate.
- 4.50 In France Mayors of Communes and Presidents of Departments and Regions, and their deputies, are elected by their respective councils, and consequently have no separate mandate.
- 4.51 In Germany the role and powers of the Mayors are set out in the constitutions of the *Länder*. In Baden-Württemberg and Bavaria an executive mayor (*Bürgermeister* [*Oberbürgermeister* in *Kreisfreie Städte*]) is directly elected by the citizens - in the former for six years (council for five), in the latter for eight years (council for six). These 'strong mayors' derive considerable independence from their popular election. The *Länder* of Hesse and possibly North-Rhine Westphalia may adopt a similar constitution in the next few years. Elsewhere the mayor or the executive board (*Magistrat*) is appointed by the elected Council and has no separate mandate, though he/she/it may wield great political power, notably in the three city-states: this model seems to be the one favoured for adoption by the *Länder* of the former East Germany.
- 4.52 In the Netherlands the full-time, salaried and pensionable mayor (*Burgemeester*) is appointed by 'the Crown' for a renewable 6-year term. Political inclinations are taken into account in their selection, although s/he must act in a scrupulously non-partisan manner, implementing loyally the decisions of the elected Council<sup>17</sup>
- 4.53 Swedish local authorities do not have an executive 'mayor'. Local councils are obliged to appoint from amongst their number a chief executive committee as the local government's supreme executive authority. In county councils and larger municipalities one (or more) of the elected councillors is appointed for the life of the council, full-time or part-time, to salaried and pensionable posts as executive commissioner(s). But none of these have any separate mandate.

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<sup>17</sup> The Dutch, like the Germans, consider that any intelligent citizen must have political views, which should be openly expressed: the British civil servant's profession of being 'non-political' is viewed as suspect and hypocritical.

4.54 In Switzerland every canton and every commune can choose its own administrative system. A few of these are similar to the federal system, but there are innumerable variations: often influenced by practice in neighbouring countries - France, Germany, Austria or Italy (with which the cantons or communes may have strong cultural affiliations) - which may or may not include mayors (or more probably executive committees) with separate mandates.

## CHAPTER FIVE FINANCIAL AUTONOMY

- 5.1 In **New Zealand** there are no legal or constitutional limitations on the local authority's power to set its own budget or to determine how its income is spent. However, by British standards, budgets are small. The budget is set in the context of an annually produced plan<sup>18</sup>. The annual plan is set within a medium term financial framework.
- 5.2 There are centrally determined restrictions on loan finance. New spending proposals since 1996 need to define the beneficiaries - the general public good (supported by rates); private good (user should pay) and future generations (funding via loans). There is provision for trading enterprises to be formed, placed at arms length, and run as businesses .
- 5.3 In **Australia** local government is dependent on the property tax. This is supplemented by selective fees and charges. Local authorities have discretion in setting budgets and determining local priorities. There are specific grants from both federal and state government but the majority of expenditure is financed from the local tax base. State government exerts some influence over borrowing.
- 5.4 In the USA, as local government is a creature of state government, the federal government has no constitutional or legal constraints on local government finance. Most state constitutions limit levels of local property taxes, some states also place limits on local sales, income and other taxes.
- 5.5 Most local authorities have extensive powers to raise taxes. The main limitations are the incorporating charter and the state constitution. The major source of local tax income are:
- property taxes;
  - sales taxes;

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<sup>18</sup> This idea is taken up in the development of the 'Best Value' agenda in this country.

- alcohol and tobacco taxes;
  - fuel taxes; and,
  - income taxes.
- 5.6 Nearly all local governments levy a property tax. Most cities levy a sales tax. The other taxes are usually only found in large cities. Occasionally a fortunate municipality or county may levy a ‘severance tax’ on industries that extract natural resources.
- 5.7 Approximately 60%-70% of local government income is raised from local taxes.
- 5.8 Investment is usually only subject to state and federal financial regulations. Borrowing is usually authorised through voter referendums and can be extensive. User charges are not usually restricted and often reflect market rates. In some States user charges are *required* to reflect market rate. Levering-in of private finance is done through issuing revenue bonds or through guaranteeing private investors the service charge for a number of years.
- 5.9 In **Denmark**, the share of net public expenditure by the counties (10%) and the local authorities (41%) is so large that, although in principle both levels are free to determine their standards of service and to fix tax levels, in practice annual discussions between the central government and the local authority associations lead to a "budget co-operation agreement", agreeing *voluntary* guidelines for expenditure and taxation. Thus restrictions have been imposed on investment ceilings, taxation rates, loans, and numbers of personnel, and are generally complied with.
- 5.10 In principle the democratically controlled local authorities are free to impose any taxes they wish. In practice the principal local taxes are the *local income tax* (a non-graduated tax on personal income) and a *land tax* based on property values. The municipality may vary both tax rates; the county *land tax* rate is fixed statutorily every year.

- 5.11 Some 68% of county revenue is from income tax and 5% from land tax. Nearly 60% of municipality revenue derives from these two taxes, together with a 12% share of the national corporation and capital gains taxes. (About half the rest of the local authorities' income is in the form of user payments and service charges, and the remainder - some 20% - comes from central government, either to reimburse the costs of national tasks performed by the local authority, or as block grants not earmarked for any specific activity).
- 5.12 Local income tax rates vary from 13% to 23% (average 20%) of net income; the county rate ranges from 9% to 11%. The tax is collected centrally and then distributed to the payers' places of residence according to the rates set by the counties/municipalities. The land tax is based on thousandths of assessed value: municipal rates vary from 6- to 24-thousandths, whilst the county rate is fixed at 10-thousandths. The land tax is collected by the municipality, both for itself and for the county.
- 5.13 In **France** local authorities are obliged by law to decide their annual budgets by a fixed date, to present balanced budgets, and to provide for all obligatory expenditure. They are required to follow guidelines established by the Ministry of Finance, and to observe limits set on their freedom to fix and to vary their taxes. Otherwise they are free to spend as they wish.
- 5.14 The levels of the principal local taxes, on which all three levels of government draw, are set by the local authorities; but they are collected by the national tax office and redistributed. These are the *taxe professionnelle* (49.6%<sup>19</sup>) levied on industrial and commercial businesses and liberal professions; the *foncier bâti* (26.1%) levied on owners of buildings; the *foncier non-bâti* (2.1%) levied on undeveloped urban land, agricultural land and forests ; and the *taxe d'habitation* (22.2%) based on the rental value of dwellings.

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<sup>19</sup> Percentages are for 1996.

- 5.15 Over 75% of commune revenue is from these four taxes in the proportions indicated above. The regions and departments draw on all these, but also rely for between 30% and 40% of their revenue on indirect taxes - the Regions on electricity consumption, vehicle registration, and property transfers; the Departments on motor vehicle tax, and land registration.
- 5.16 There are no set limits on borrowing: but in the wake of crises arising from excessive civic indebtedness, the statutory regional loans boards now establish guidelines to which local authorities are expected to adhere. Ministry permission is required to float bonds or to borrow in foreign currencies on international markets.
- 5.17 In **Germany** the constitutional guarantee that *Gemeinden* have the right to regulate the affairs of the local community is held to imply 'financial sovereignty'. In practice, however, each *Land* defines detailed budgeting and other financial principles for its local authorities, and lays down requirements for statements of accounts, efficient financial planning (over five years, as a rule), administration and control, and borrowing.
- 5.18 Local authorities' reliance on their own taxes has over recent decades diminished in favour of *pooled revenues*, notably shares of income tax (from the Federal government) and motor vehicle taxes (from the *Land*). The local authorities still collect a business tax (of which 40% is transferred to the *Land*); and two types of land tax. Other minor taxes which may be levied include taxes on dogs, hunting, entertainment, public houses, and beverages.
- 5.19 About one-third of local authority income derives from its own direct taxes, some 20% from fees and charges, and most of the rest from transfers from federal and state levels. Bases for the business and land taxes are determined by the *Land* and a 'multiplier' for the year is decided by each local authority. Tax levels vary considerably.

- 5.20 Borrowing is permitted from savings and other banks, both for investments, and to meet recurrent costs if other forms of finance are not possible or appropriate. Interest and capital repayments must be paid from current revenue.
- 5.21 In the **Netherlands** municipal budgets are required to be in balance. If they are, Provincial supervision is virtually non-existent. If they are not in balance, then the Provincial Executive may exercise 'repressive supervision', under which its approval is required for all expenditure. (The Provinces themselves are still more tightly controlled by central government).
- 5.22 Historically local authorities in the Netherlands were highly autonomous and raised their own revenues, notably through *octroi* and income tax. But for various reasons the revenues of the municipalities (and consequently the services provided by them) differed enormously, a fact which was conspicuous in such a densely populated country. In 1929 an *Allocation of Finances Act* abolished most municipal taxes and replaced them with a *Municipal Fund*, voted annually by Parliament, for which revenues are raised nation-wide, thus spreading the tax burden much more equitably. Further Acts have marked transitions to an allocation based on objective criteria (less closely linked to population than to the intensity of building development in the locality - especially the number and type of dwellings).
- 5.23 The principal direct local tax nowadays is on property, based on a market value re-assessed by the municipality every four years in accordance with rules set by a national Valuation Chamber. A few other direct levies - such as entertainment, tourist and dog taxes - provide a very small addition to municipal revenues.
- 5.24 Although policy is to move away from specific grants towards increased block (unallocated) transfers through the Municipal Fund, more than 50% of local authority revenue is still so provided. A further 30% is provided by the Municipal Fund, 8% by fees and charges, and a mere 7.7% by direct local taxation<sup>20</sup>.

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<sup>20</sup> Figures for 1996.

- 5.25 The municipality may vary the property tax rate, but its yield may not exceed 10% of the authority's net recurrent income. Although small this tax is extremely unpopular, because of its high visibility.
- 5.26 A few small and wealthy municipalities impose very low property taxes - even none at all - but most of the larger ones find themselves obliged to exact the maximum permitted.
- 5.27 Municipalities have free access to the Dutch capital and money markets, but foreign borrowing is permitted only in Dutch guilders. In practice all but the largest municipalities invest and borrow almost exclusively through the powerful Bank of Netherlands Municipalities, in which all local authorities have a shareholding. Central government limits the 'floating debt' which may be incurred by any municipality to 5.6% of its long-term funding. Capital investment is regulated by a *Public Bodies Capital Expenditure Act* and "*should in principle be financed from fixed loans and other fixed resources*".
- 5.28 In **Sweden**, until a 'temporary' tax-freeze in the early 1990s, the rates of local tax levied were entirely in the discretion of each local authority - county, municipality, or church parish. But pressures are great to diminish the local tax burden, notably by increasing fees and charges.
- 5.29 A regressive local income tax (including an element of property tax) is regarded as the foundation of local autonomy: its burden on citizens has tended to be about double that of the (progressive) national income tax. Assessment, charging and collection are all handled by a national tax authority, but the local tax assessment committees are appointed by the municipal councils.
- 5.30 Over 60% of county revenue is from income tax, and more than 40% of the municipalities'. Fees and charges account for about a quarter of their income. Most of the rest comes from the State, either as reimbursement for expenses incurred for

nationally required functions or in the form of a tax-equalisation block grant to ensure that impoverished councils can maintain adequate standards of service provision.

- 5.31 Local income tax rates vary considerably. Fees and charges may also be freely set, but tend to be rather less variable, as they ought to cover costs, but may not lawfully yield a profit.
- 5.32 All local authorities may raise short-term or long-term loans, for capital expenditure. However, most county investment is financed by taxation, and even in municipalities new loans seldom amount to more than a few percentage points of annual revenue.
- 5.33 In **Switzerland** the share of net public expenditure by the communes and the federal government amounts to roughly 30% each, whilst the cantons spend some 40%. Each level sets its own rates of taxation, but there is an elaborate revenue-sharing system to facilitate equitable redistribution between wealthy and impoverished cantons and local authorities.
- 5.34 In principle the communes are free to borrow or invest, or to impose any taxes or user charges they wish (other than customs and excise duties, which are a federal prerogative). Their sources of revenue vary, but are mostly income and wealth taxes, estate duties, and charges for services; moreover, federal and cantonal transfers provide capital for education, health, social services, traffic, energy and environmental protection.

## **CHAPTER SIX      OTHER THEMES IN THE COUNTRIES' LOCAL GOVERNMENT SYSTEMS**

6.1      These are additional observations and comments which should help to put each country's system into perspective.

### **Australia and New Zealand**

6.2      Australian local government has followed federal and state government in a reform process of adopting many of the tenets of New Public Management and neo-liberal economics. There has been a similar process in New Zealand.

6.3      Local government in Australia has low status when compared with state government. This is partly the consequence of a long tradition of small authorities (before the recent structural reform/amalgamation processes) and the minor nature of most local government services. The willingness to pick up the community governance/community leadership agendas is beginning to change local perceptions and impact.

6.4      The recent 'Accord' between the Federal Government and local government may mark the first stage in developing a constitutional position for local government.

### **United States of America**

6.5      A key theme is the culture of local democracy in the United States. Local issues are decided locally and the people expect it to be so. To quote Alexander de Tocqueville: "*The social state of Americans is essentially democratic.*" Out of this has arisen not only a culture of local democracy but also of local variation. Each community finds its own solution to local dilemmas and problems. No two local political structures or authorities are the same in the US.

### **Denmark and the Nordic Countries**

6.6      The basic principle of Danish local government is *subsidiarity*: the provision of services and the solution of problems should take place as close to the citizen as the

nature of the relevant process allows. The Danish National Association of Local Authorities suggests that Danish local government is rooted in the following concepts:

- *All local government builds on the **concept of community**. 'According to ancient tradition, everybody shares a responsibility for those with whom they live and work together'.*
- *Central and local policies must be coherent, but within a broad general framework local authorities must have **self-government**, with freedom to decide and control local policy.*
- *Among the powers vested in **democratically elected** representatives, those related to the levying of taxes and the granting of subsidies are of decisive importance.*
- *Local authorities should deal **comprehensively** with all domestic issues for which the public sector is responsible, 'from taxation assessments to water and air purification'.*

6.7 In Denmark, as in all the Nordic countries, citizens tend to identify closely with their local communities. In such countries, central government is a convenient mechanism to provide for the shared needs of all those communities; but otherwise the "subsidiarity" principle is paramount.

6.8 Some of the key features of Nordic local government, in comparison with Scotland's experience, are that:

- Local government means *local*: the basic units are much smaller than those in Scotland, and *regional* authorities (e.g. Danish or Swedish counties) are hardly considered to be 'local' government;
- Local government operations are very 'transparent' in contrast to the relatively opaque tradition in Scotland;
- Accountability is the concern of citizens; central government practically never interferes, and audit is concerned solely with accounting – not with management;

- Proportional representation gives rise to a multitude of parties and hence to a quest for consensus, rather than confrontation;
- There is a high proportion of elected members to voters (between 1 : 200 and 1 : 400);
- Local government units which are very large are felt to be too remote from their populations.<sup>21</sup>.
- Local authorities readily co-operate with one another and with other institutions to provide services for their citizens..
- Local political leadership enjoys high prestige: local officials tend to have at least as much status and prestige as their central counterparts.
- Professional officers must be non-partisan in *operation*, but they may openly express their political opinions. Indeed they would be looked on with suspicion if - as intelligent people - they professed political neutrality.
- The revenues from taxes are *shared* between central and regional governments and local authorities, as equally important partners. These funds are 'public' money, and do not *belong* to any government, whether central or local. They prefer such words as "transfers" to the idea of "grants"<sup>22</sup>.

6.9 In **Sweden** there is a widespread feeling that the larger municipalities created in the 1970s - with an average population of nearly 30,000, and a reduction in the number of elected representatives from over 200,000 to about 70,000 - have become part of a governmental machine, remote from the citizen, and dominated by nation-wide party politics. As more services are contracted out, the rationale for very large units diminishes, and so pressure is growing to revert to units on a more human scale. Under enabling legislation, several cities have set up multi-purpose sub-municipal committees to achieve this.

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<sup>21</sup> Democratic effectiveness is more important than financial efficiency

<sup>22</sup> A term which reminds citizens of these counties of the days when tax revenues and similar income were the property of "the Crown", rather than wealth held in common for the public who actually contribute those taxes.

- 6.10 It has also been strongly argued that central government controls result in excessive costs: so recent years have seen experiments to introduce the Nordic "free commune", drastically reducing central involvement. Significant elements of these experiments are a restructuring of hitherto compulsory committee systems; much more flexible use of State subsidies; the reduction of supervision of local government by national authorities; and provision for 'free communes' to seek exemption from State regulations which stand in the way of local administrative efficiency. Some of the innovations resulting from these experiments have proved so beneficial that they have been applied nation-wide - in a new *Planning & Building Act* for example.
- 6.11 In **France** local authorities have managed to turn the complexities of the bureaucratic system to their advantage and create their own room for manoeuvre: the central state may be omnipresent, but it is also often powerless under the burden of its own weight. Similarly the mix of roles has furthered the osmosis between centre and periphery: administrators become involved in politics, and politicians in administration. Nationally elected representatives also speak for the 'grass roots' and localism runs throughout the system, to the top.
- 6.12 In the **Netherlands** the egalitarian policy of centralising and re-allocating revenues throughout the Netherlands gives outsiders the false impression that Dutch local authorities, raising barely 15% of their own revenue, must be completely subservient to central government. In fact this is by no means true:
- nearly all the specific grants transferred to the local authorities are already hypothecated to provide specific services - health, education, social welfare, police, etc - on behalf of central government;
  - the size of the Municipal Fund, which normally accounts for some 12% of national public expenditure and may be spent by the municipalities as they wish, is decided not by the Government - the executive branch - but by Parliament - a legislature in which the local authorities successfully cultivate many powerful friends. Although the allocation of the Fund is technically at the discretion of

the Ministers of Finance and the Interior, in practice they implement the recommendations of a committee, on which a majority is appointed by the local governments themselves.

- Dutch local authorities have learned the importance of solidarity, and their local authority association [*V.N.G.*] is probably the most powerful and effective such institution in Europe, both as a lobbyist and as a provider of many services to its members which elsewhere would have to be sought from central government or other agencies.
- the municipal bank [*B.N.G.*] is likewise a powerful and influential national institution.

6.13 These and other factors may explain why an ambitious politician is likely to be much more interested in becoming Burgomaster of a major city, such as Rotterdam or Amsterdam, than of gaining a seat in the national Cabinet. It is *there* that the prestige and the power lie in the Netherlands.

6.14 **Swiss** local government is bewilderingly unlike others, in that government is genuinely directed 'from the grassroots' by the individual citizens' powers of 'direct democracy', allowing for constitutional or legislative initiatives and referenda at all levels of government. Swiss society tends to be very conservative, often intolerant: women were only recently granted the vote, immigrants are still denied it; membership of international agencies is avoided; there is much suspicion of national environmental planning laws. Such an extraordinarily decentralised system has been termed "obviously unworkable in today's world".

## CHAPTER SEVEN CONCLUSIONS

7.1 This report has considered the constitutional status of local government in other countries. A number of key themes have been explored:

- the constitutional status of local government;
- the distribution of functions between the levels of government;
- powers of intervention and direction;
- electoral arrangements (and the role of elected mayors or executives);
- financial powers or responsibilities of local government (including taxation); and,
- themes and issues which characterise the different national approaches to local government.

7.2 Considerable variety is in evidence in the countries considered. The scope of this report does not extend to consideration of the relative effectiveness of these models in the countries themselves nor to their potential applicability in other settings. But it is clear that their relative success or failure is dependent on many contingent factors and thus a 'pick-and-mix' approach is strongly advocated against.

7.3 The experience of other countries suggest that there are a number of key dimensions for consideration:

- the constitutional position of local government particularly whether the guiding principle is *ultra vires*, *general competence* or *community governance*;
- the case for subsidiarity;

- alternative forms of political management arrangements;
- alternative forms of electoral arrangement;
- effective integration and networking between levels of government;
- approaches to citizen involvement;
- alternative forms of service delivery; and
- the mix of regulatory and implementation roles.

## APPENDIX 1: RIGHTS TO LOCAL SELF-GOVERNMENT

The development of *constitutional* rights to local self-government in Europe

Year	Country
1789	Luxembourg
1803	Switzerland (also 1848 and 1874)
1808	Prussia
1831	France
1831	Belgium
1837	Denmark & Norway
1848	The Netherlands
1862	Sweden
1865	Finland (also 1871)
1919	Germany (Weimar Republic)
1920	Austria (also 1929)
1948	Italy
1949	Germany (Federal Republic)
1975	Greece
1976	Portugal
1978	Spain
1990	Germany (Democratic Republic)
1991	Bulgaria
1992	Slovenia
1994	Lithuania

**APPENDIX 2: THE CONSTITUTIONAL STATUS OF LOCAL GOVERNMENT IN THE FIVE MAIN 'FAMILIES' OF LOCAL GOVERNMENT TYPES**

	Britain	USA & Canada	France & Italy	Sweden & Denmark	Japan
Constitutional status	creation of parliament	state constitution	national constitution	national constitution	national constitution
National structure	mixed	mixed	3 tier	2 tier	2 tier
Powers	set by statute	limited by statute	general competence and statute	general competence and statute	general competence
Control of legality by	courts	courts	regions and courts	state and courts	state and courts
Control of local policy	low	low	interlocked	interlocked	interlocked
Control of local policy historically	low	low	high	high	high
Local functions 1945-1990	reduced	mixed	increased	increased	increased
Local executive authority	council	mixed	mayor or president	mixed	mayor or governor with board
Representational system	majority	majority	proportional representation	proportional representation	majority
Party system	strong two party	weak two party	strong multi-party	strong multi-party	strong multi-party
Participation at elections	low	low	high	high	high

Adapted from Norton, A. *International Handbook of Local and Regional Government*

### APPENDIX 3: SIZES AND POPULATIONS

This appendix is included as background information. It sets out the average sizes of local authorities in a number of countries.

<b>Size and populations of basic local authorities</b>		
	<b>Number of Authorities</b>	<b>Average Population per authority</b>
Iceland	222	1,100
France	36,757	1,560
Greece	6,022	1,827
Switzerland	3,000	2,122
Luxembourg	126	2,905
Austria	2,304	3,000
Spain	8,027	4,700
Canada	4,238	5,594
USA	35,800	6,600
Italy	8,074	7,019
Germany	8,846	8,845
Norway	448	9,421
Finland	460	10,770
Belgium	589	16,740
Netherlands	800	17,860
Denmark	273	18,811
Australia	836	19,114
Sweden	284	30,249
Portugal	275	34,180
Japan	3,245	37,200
Ireland	92	41,190
New Zealand	70	46,729
<b>SCOTLAND</b>	<b>32</b>	<b>160,132</b>

<b>Member States in Federal Constitutions</b>		
	<b>Number</b>	<b>Average Population</b>
Swiss cantons	26	248,000
Austrian Lander	9	849,000
Australian States	6	2,495,000
Canadian Provinces	10	2,533,000
German Lander	16	4,905,000
USA States	50	5,008,000
<b>Autonomous Regions</b>		
Greek regions	16	1,081,000
Spanish autonomous regions	17	2,142,000
French regions	22	2,521,000
Italian regions	20	2,833,000
Belgian regions	3	3,286,000
<b>Scotland</b>		<b>5,100,000</b>

## APPENDIX 4 THE FRAME OF REFERENCE

The frame of reference for each country study is based on the Scottish Office brief for the research (with slight amendments). The frame is set out below in the form of a series of questions.

<b>1</b>	<b>Constitutional status of local government</b>	
1.1	Describe the constitutional status of local government in [name of state].	
1.2	Is the constitutional status <i>permanent</i> ? (If 'yes' describe the nature of the permanence. If 'no', go to question 1.3)	
1.3	Describe how can the constitutional status be amended.	

<b>2</b>	<b>Distribution of functions between levels of government</b>	
2.1	Is there a <i>regional (or sub-national)</i> level of government in [name of state]? (If 'yes' answer question 2.2. If 'no', go to question 2.3)	
2.2	Are regional authorities able to do anything which is not prohibited by law - a 'power of general competence'? (If 'yes' describe their power. If 'no', go to question 2.2.1)	
2.2.1	Describe the functions of <i>regional</i> government	
2.2.2	Describe any discretion a regional authority has over whether, or how, it undertakes functions for which it is responsible	
2.2.3	Does the regional level of government have the power to legislate over the <i>functions</i> of lower tiers of government? (If 'yes' describe their power)	
2.2.4	Does the regional tier of government have the power to legislate on public services <i>other than those provided by local government</i> ? (If 'yes' describe the power(s))	
2.3	Are local authorities able to do anything which is not prohibited by law - a 'power of general competence'? (If 'yes' describe their power).	
2.3.1	Describe the functions of <i>local</i> government.	
2.3.2	Describe any discretion a local authority has over whether, or how, it undertakes functions for which it is responsible	
2.4	Is there any common membership between tiers of sub-national government? (is this by design, e.g. <i>ex-officio</i> posts, by tradition, or by individual action)	
2.5	What mechanisms exist for communicating between the authorities?	

<b>3</b>	<b>Political accountability (1)</b>	
3.1	Does a superior tier of government have the power to override the <i>decisions</i> of local government? (If 'yes' describe their power)	
3.2	Does a superior tier of government have the power to <i>direct</i> the actions of local government? (If 'yes' describe their power.)	
3.3	Does a superior tier of government have the power to <i>intervene</i> in the management of a local authority when it is dissatisfied with the local authority's actions? (If 'yes' describe the power and the circumstance when it is (or can be) used)	

<b>4</b>	<b>Political accountability (2)</b>	
4.1	Describe the arrangements for <i>national</i> elections. Include information on: frequency of national elections voting system (first-past-the-post, or proportional system) turnout other information about ease of voting, etc.	
4.2	Describe the arrangements for <i>regional</i> elections (if there is an elected regional tier). Include information on: frequency of regional elections voting system (first-past-the-post, or proportional system) turnout other information about ease of voting, etc.	
4.3	Describe the arrangements for <i>local</i> elections. Include information on: frequency of regional elections voting system (first-past-the-post, or proportional system) turnout other information about ease of voting, etc.	
4.4	Do the election cycles coincide? (If there are different electoral cycles, please explain)	
4.4	Describe any limitations on dual mandates.	
4.5	Are any elected council members or elected officers (e.g. elected mayors) given a separate mandate? (If 'yes' please describe)	

<b>5.</b>	<b>Financial Autonomy</b>	
5.1	Describe any legal or constitutional limitations on a local authority's power to set its own budget, or to determine how much is spent on particular activities.	
5.2	Describe the powers which local government has to raise income from local taxes.	
5.2.1	What types of local tax are levied by authorities in [name of state]?	
5.2.2	What proportion of local government spending is raised from local taxation?	
5.2.3	How much freedom do local authorities have to vary amounts raised from local taxation?	
5.2.4	How much variation is there between the levels of local taxation in each authority?	
5.3	Describe any restrictions on local authorities' financial management in the following areas: investment borrowing user charges levering-in private finance	

<b>6</b>	<b>Themes and issues</b>	
	Please note any key themes or issues which you consider should be highlighted in the final report.	

## APPENDIX 5      REFERENCES AND BIBLIOGRAPHY

Clarke, M. and Stewart, J. (1990) *The future of local government, some lessons from Europe*. Inlogov: Birmingham

Council of Europe (various) *Structure and operation of local and regional government*. OECD: Strasbourg

Development Administration Group (1996) *Other People's Local Government*. LGMB London

Organisation for Economic Development and Co-operation (various) *Country Reports*. OECD: Paris

Norton, A. (1994) *International Handbook of Local and Regional Government*. Edward Elgar: London

Norton, A. (1996) *Local Government in other western democracies*. Inlogov: Birmingham

Stoker, G. (1995) 'The European Union, Local Government and the Regions' in Taylor, A. *The renaissance of local government*. SOLACE