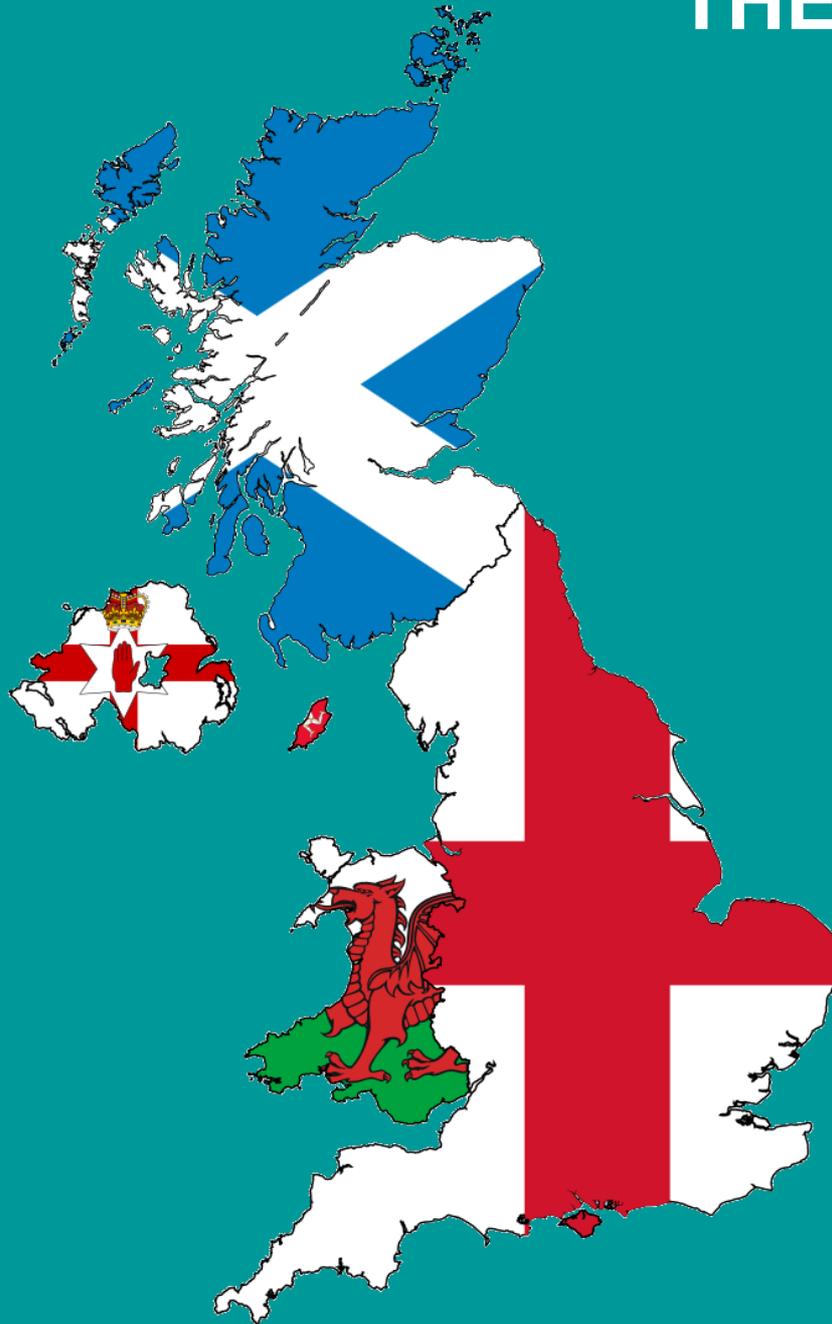




DEVOLUTION AND THE FUTURE OF THE UNION



Devolution and the Future of the Union

Edited by Robert Hazell

The Constitution Unit
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Foreword

Ever since the Scottish independence referendum of September 2014, and the Vow by the three main party leaders promising further devolution to Scotland, devolution policy has developed at dizzying speed. This has been strongly criticised by committees in both Houses of Parliament, because no one could say what the impact of these changes would be on the UK as a whole. We therefore assembled a team to try to chart the way ahead, and to assess the impact of further devolution on the future of the Union.

We have also worked at dizzying speed, because we wanted to produce our report before the May 2015 election, to inform policy makers and politicians in the new Parliament about the very big decisions they will be asked to make. To do this we enlisted a team consisting mainly of former senior civil servants with considerable expertise in devolution and related policy areas. Special thanks go to Alan Cogbill, Jim Gallagher, Hilary Jackson, Sam Mitha, Bob Morris, Tim Oliver, Alan Trench, Brian Walker, and Peter Waller for all their contributions to this report, and for the speed at which they produced them. It is still rough around the edges, but we wanted quickly to put it in the public domain to inform the pre and post election debates. Comments, corrections and additional thoughts are welcome, since we may revisit this subject in the months to come, and we would like to offer more detailed analysis than we have had time or space for in this report.

Robert Hazell

27 April 2015

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Executive Summary

Devolution is changing very fast, with the Smith Commission proposals for Scotland, more powers proposed for Wales and Northern Ireland, and limited and patchy decentralisation in England. But policy continues to develop incrementally and bilaterally, with no sense of an overall strategy.

The purpose of this report is to chart the future of the Union in the light of these developments. Their cumulative impact could radically change the nature of the political, economic and social unions which underpin the UK. A new balance may be struck, in a Union with a more coherent territorial constitution. Or without intending it, these changes could render the Union ungovernable, or lead to its break up as a state.

The nature and functions of the Union have been taken for granted. They need to be spelt out. The *economic union* provides the UK with a single market, with a single currency and strong central fiscal regime. The *social union* provides the social solidarity which binds the UK together, by redistributing revenue, and pooling and sharing risk through welfare benefits and pensions. In the *political union*, every part of the UK is represented in the Westminster Parliament, which manages the economic and social unions, and as the sovereign parliament can itself reshape the political union.

Devolution and Whitehall and Westminster

Whitehall lacks capacity to think about the Union because it has relegated it to issues of devolution on the fringes. This is exacerbated by the fragmentation in Whitehall, with six centres for devolution policy. This will not change so long as there are three relatively junior territorial Secretaries of State with separate offices, a hangover from pre-devolution days. There needs to be a single senior Cabinet Minister responsible for devolution and the Union, supported by territorial Ministers of State. Similarly in Parliament there should be a single Devolution Committee, which could be a Joint Committee of both Houses; and which could have territorial sub-committees.

Devolution policy making has become rushed to the point of recklessness. In future, changes should be implemented and allowed time to bed in before the next round of policy is embarked upon.

English votes on English laws commands strong popular support, but will be difficult to introduce, for technical and political reasons. The coalition government produced four different procedural options, with even the Conservatives failing to agree. Labour would have little incentive to introduce EVEL, which would make it harder for them to govern. The Conservatives might also have less incentive than expected, because if in government they would already have a majority in England.

Scottish and Welsh over-representation needs to be corrected. The aborted 2013 boundary review would have reduced Scotland from 59 to 52 seats, and Wales from 40 to 30. The review will be revived in 2015-18. Further devolution will raise the question whether Scotland, Wales and Northern Ireland should have equal representation with England, when their MPs have less to do.

A second chamber representing the nations and regions of the UK would be unlikely to bind the Union together. Federal second chambers in other countries tend to be party chambers first, and federal institutions second. To bind the Union together, the machinery of intergovernmental relations is far more important than the design of the second chamber.

Further fiscal devolution

In forecasting further devolution, the report posits three models, labelled Devo More, Devo Even More, and Devo Max. The status quo is called Devo More because it includes big commitments already made to further devolution, to be implemented early in the next Parliament.

Devo More thus includes the outworking of further fiscal devolution already set in train. In Scotland the Smith package includes all income tax, 10 VAT points, land-related taxes and power to introduce new taxes. In Wales the St David's Day process offers partial income tax devolution and land-related taxes. Northern Ireland has been given power to set its own rate of corporation tax. In England City Deals etc involve transferring spending budgets and re-packaging central government grants into bigger pots.

Devo More will result in diverging social citizenship across the UK, hard to rationalise on the ground of fairness and redistribution. Wales (under-funded by Barnett) and outlying parts of northern England will be losers. City Deals substitute allocation of funds by relative need with bidding exercises, so fair redistribution is further undermined.

Devo Even More could include devolution of corporation tax, and employers' national insurance contributions (the only major tax devolvable after income tax). In England there would be more comprehensive devolution of spending budgets, matched by greater revenue raising power, by decentralisation of business rates, higher bands of Council tax and property revaluation.

Devo Even More would require extensive changes to block grant funding, with big but complex reductions to allow for devolved taxes. In England business would resist devolution of non-domestic rates. Regional inequalities would greatly increase, to levels higher than the 1930s, reducing social citizenship as a means of pooling and distributing risks and resources.

Devo Max would deliver full fiscal autonomy. Scotland would set and collect all taxes in Scotland, remitting a portion to the UK for shared UK services. The UK would retain responsibility for the currency and monetary policy, and there would still be a single UK market. In England there would be devolution of the health service, plus local income tax.

Devo Max would carry big financial risks for Scotland. Its own revenues would be inadequate, requiring cuts of £7-8bn a year, with significant multiplier effects. It would not have any attraction for Wales and Northern Ireland, given their structural fiscal deficits. Nor would it have any benefit for the UK. The UK government would continue to bear risks for currency and monetary policy without control over fiscal policy in Scotland. Devo Max could not be a stable settlement, but is likely to be a staging post to Scottish independence. It would call into question continued Scottish representation at Westminster.

To put Devo Max in comparative context, in OECD countries no sub-national government raises more than 50% of its revenue. The Smith proposals already take Scotland close to that upper range. Full fiscal responsibility is a fantasy, and further fiscal devolution highly unlikely. Extreme fiscal decentralisation is typically found only in remote islands, with limited links to the state of which they are part. Scotland is not in that category.

EU Referendum, and British bill of rights

An In/Out referendum on the EU could precipitate a further Scottish independence referendum, especially if Scotland had voted to stay in. Plans to replace the Human Rights Act with a British bill of rights also risk weakening the Union, if the devolved governments want to retain the ECHR and withhold their legislative consent.

A Citizens' Convention

The idea of a Citizens' Convention has been promoted by Labour and supported by the Liberal Democrats, as a way of taking debates about devolution and the future of the Union beyond the political parties, and harnessing levels of public engagement of the kind seen in Scotland. It would include a minority of politicians, to build cross party consensus, and with the help of expert advisers seek to develop a more coherent overall reform package, rather than further piecemeal reforms.

The challenges are to devise an agenda and terms of reference which are manageable, and deliverable within a realistic timescale. It would also need the support of the devolved governments and the other political parties. If the devolved governments turn away, the convention might be asked initially to address the English Question. If the parties do not want to be involved, they would not be represented, and it might become purely a Citizens' Convention.

Introduction: Devolution on the brink

The future of the Union is in the balance, with the huge upsurge of support for the Scottish National Party before and after the independence referendum in September 2014. This triggered responses from the Conservatives for English votes on English laws, and from Labour for a constitutional convention. It had also prompted promises from all the unionist parties for further devolution to Scotland. As a result the Smith Commission brought forward rushed proposals for devolution of further tax powers to Scotland.¹ But further tax powers are also proposed for Wales, under the St David's Day process, together with further legislative powers; and Northern Ireland has been given power to vary the rate of corporation tax.² Meanwhile England is being offered little tastes of devolution, through Growth Deals, City Deals etc, culminating in the proposed devolution of health spending to Greater Manchester.³

Alongside this sit the Conservative plans for an In/Out referendum on the EU; and for repeal of the Human Rights Act, replacing it with a British bill of rights which may or may not be compliant with the ECHR. This could conceivably lead to British exit from the Council of Europe as well as from the EU. And Brexit from either body might precipitate a further Scottish independence referendum, especially if Scotland had voted to stay in.

The stakes are very high; but awareness of these potential outcomes is low. Devolution had got off to an easy start, lulling Whitehall into a sense of false security, which became complacency and neglect. Devolution policy was left to develop incrementally, in a series of *ad hoc* bilateral deals, with little regard for spillover effects or their impact on the UK as a whole. The fragmentation is exacerbated by the fragmented structures in Whitehall, which has six separate centres for devolution policy; and in Westminster, which has five Select Committees with an interest in devolution. The purpose of this report is to view devolution in the round, by overlaying one incremental development on another. This should help to bring out their cumulative impact, which could radically change the nature of the political, economic and social unions which underpin the UK. Without necessarily intending it, these changes could render the UK ungovernable, or lead to its break up as a state. That is why we have written this report: to prevent us from sleepwalking into consequences which few people in the UK want to happen.

Part 1 of the report gives basic background, in terms of what the Union is for, how it compares with other federal systems, the redistribution of tax and welfare, and the European context. Part 2 analyses the different devolution settlements in each part of the UK, and their future trajectories, alongside the structures for managing devolution in Westminster and

¹ Smith Commission *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*. (27 November 2014, available: <https://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf>

² Corporation Tax (Northern Ireland) Act 2015. For Wales see St David's Day Agreement, *Powers for a purpose: towards a lasting devolution settlement for Wales* (London: HMG, 2015), available: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf>

³ HM Treasury and Greater Manchester Combined Authority, *Greater Manchester Agreement: devolution to the GMCA and transition to a directly elected mayor*, 3 November 2014. Available: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/369858/Greater_Manchester_Agreement_i.pdf>; see also House of Commons Library, *Devolution to local government in England*, standard note 07029, March 2015. Available: <www.parliament.uk/briefing-papers/sn07029.pdf>

Whitehall. Part 3 depicts four different scenarios for the future, and concludes with recommendations for managing those different possibilities.

Part 1: The Background

1.1 What is the Union for?

Since the referendum on Scottish independence in September 2014, the United Kingdom no longer feels very stable. Even unionists question its future, if only to find credible answers to justify it.

The SNP have succeeded in keeping the spotlight on the future of the Union. Westminster has been struggling to catch up and ride the tidal flow of Scottish opinion. The unionist parties are hoping that by throwing more powers at Scotland they will reduce the demands for independence. Ideology plays a part in how they approach it. The Conservatives throw down the challenge of fiscal responsibility; if you want a big state, then pay for it. Labour emphasises social solidarity more. But the further devolution extends, the more complex becomes divided responsibility; and in the absence of political trust, the greater is the opportunity for political machinations. To date the Vow, and the improved offer of “devo more” by the Smith Commission, have failed to impress Scotland while increasingly irritating England.

Unionist disquiet also stems from a growing lack of confidence in the central institutions of the British state. If the UK came so close to breaking up, what does it tell us about those on the bridge? As the final report of the Wales Governance Centre’s “UK’s Changing Union” project put it:

It is of concern that even now, after the Scottish referendum, there is a danger that constitutional issues affecting the whole of the Union will be considered in a series of bilateral agreements that may not provide the basis for a coherent and stable reform of the Union as a whole ... The reform and renewal of the Union entails more than devolving power, it must also address the form and functions of our central institutions as well as the character and purposes of the Union itself.⁴

1.1.2 Union fundamentals

The interests of the Union need to be grasped as never before, at the point when politics may be more fragmented than ever. At what point in extending devolved powers does the Union cease to be viable? Devolution has at least made the Union’s “character and purposes” more explicit.

The UK is a voluntary union. All its members are free to leave. This has been formally recognised for Northern Ireland since 1949. It applies equally to Scotland and Wales.

It is an asymmetrical union. Its members are different in size, wealth and constitutional development. England with 84% of the UK’s population has no devolution. This has implications for any new constitutional departure. England requires special recognition at Westminster which is also England’s Parliament. Can a new balance be found to satisfy the different requirements of all four members of the Union?

⁴ Wales Governance Centre Cardiff, *Towards a New Union* (final report of UK’s Changing Union project). January 2015. Available: <<http://www.ukchangingunion.org/>>

1.1.3 Political, social and economic union

These are developed further in 2.1.2. *The economic union* means an integrated economy with a single currency and a strong central fiscal regime. The UK is a domestic market in a way in which the European single market is not. Scotland is deeply integrated into the UK economy. Economic union involves a single system of macroeconomic management, underpinned by the single currency. As the governor of the Bank of England pointed out, a single currency requires fiscal union and sharing political sovereignty, so that the flows of government resources can compensate for imbalances in the private sector. He estimated that a national authority with control over roughly 25% of GDP was necessary to ensure a stable currency union.⁵ Full fiscal autonomy is incompatible with the Union, and Scottish independence is incompatible with a single currency. If an SNP government was re-elected next year on a pledge of full fiscal autonomy, it could provoke a political standoff with the UK government which would be bound to reject it.

The social union guarantees the common standards of the welfare state and equal access to it for all UK citizens in a devolved UK. The social union used to mean that the UK government gathered revenue and redistributed it. This basic model is being modified by increasingly complex power sharing, and risk sharing and pooling between governments. If devolution extends without limit, risk pooling is reduced and both standards and universal access may be at risk. In the web of complexity, uniform levels of benefit throughout the UK could be threatened. Informal aspects of the social union link the UK together: family ties (thanks to the free movement of people), professional (shared experiences through UK wide companies, universities, the military, civil service, the NHS) or cultural (a common language, media, art and sports). The formal social union works alongside the economic union to provide the basic social solidarity that binds all British people together. In both its governmental and informal aspects, the social union is both an expression of common citizenship and a way of creating it.

The political union guarantees the other aspects of the Union. Up to now the central institutions of the British state have survived with little alteration, or recognition that devolution has altered the nature of the sovereign Parliament. This needs to be revisited. As a political union, every part of the UK is represented in the Westminster Parliament, which remains sovereign (with the proviso that European laws are, by Westminster's consent, a higher source of law). But Westminster only legislates on devolved matters where it has the agreement of the devolved governments and legislatures. Matters such as defence and foreign affairs are reserved to Westminster but even here, devolution intrudes. EU matters are as domestic as they are foreign. The devolved nations have offices in Brussels, but the UK is recognised by other states as a single, unified member of the international community. To work as an effective political union, the UK's various levels of government have to work together.

The UK's political union struggles to accommodate England. Political unionism should not be seen as the construction of a single, consolidated, centralised state. Unionism is also about the maintenance of nationhood and autonomy within the union, by means of compromise,

⁵ 'The economics of currency unions', speech by Mark Carney, Governor of the Bank of England, Edinburgh, 29 January 2014. Available: < <http://www.bankofengland.co.uk/publications/Documents/speeches/2014/speech706.pdf>>

adjustment, accommodation and even nationalist assertion. It may require the creation of a more obviously territorial constitution.

1.1.4 A territorial constitution

A territorial constitution for the UK, quasi-federal in character and expressed in something like a Statute of the Union, is being canvassed to express the principles and character of the Union; recognise the special status of Scotland, Northern Ireland and Wales and the permanence of their institutions within the UK; and give explicit recognition to the place of England. But it is not clear what its effects would be. Would it be more than declaratory? If laid down in statute, would it be justiciable? Would the courts want to adjudicate on a Statute of the Union?

1.1.5 The Union in the 2015 Parliament

A unified approach to devolution

Select Committees of both Houses of Parliament published critical reviews of the draft clauses based on the Smith Commission report.⁶ The Political and Constitutional Reform Committee called for the next Parliament to set up a mechanism (a constitutional convention?) to consider in the round the three devolution settlements, the trend towards decentralisation in England and how the Union would be “strengthened as a result.” The outcome could be the codification of power and competences within the UK in either a Statute of the Union or a written constitution.

An approach of this kind would require basic consensus among the main parties. Labour and the Liberal Democrats have supported the idea of a citizens-led constitutional convention, but the Conservatives are more cautious.⁷

The political outlook

As UK politics may be entering a period of exceptional instability, the conduct of the political parties in the new parliament will be as important for the future of the Union as developments in devolution. For the sake of UK cohesion, the main parties will need to take care to prevent clashes between the different nationalisms in Great Britain. The Union should not be treated as a political football, whether between Labour and the Conservatives, or with the SNP. The SNP are not the voice of all Scotland, which remains deeply divided

⁶ House of Lords Constitution Committee, *Proposals for the Devolution of Further Powers to Scotland*, HL 145, March 2015, available: <<http://www.publications.parliament.uk/pa/ld201415/ldselect/ldconst/145/145.pdf>>; House of Commons Political and Constitutional Reform Committee, *Constitutional Implications of the Government's draft Scotland Clauses*, HC 1022, March 2015, available: <<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpolcon/1022/1022.pdf>>; and *The Future of Devolution after the Scottish Referendum*, HC 700, March 2015., available: <<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpolcon/700/700.pdf>>.

⁷ The Conservatives and Liberal Democrats set out their separate responses to the idea of a Constitutional Convention on p 27 and pp 31-32 of *The Implications of Devolution for England*, Cm 8969, Dec 2014. See also David Laws, ‘Labour put aside partisanship on the constitution. Now the Tories must do the same’, *The Guardian*, 2 October 2014. Available: <<http://www.theguardian.com/commentisfree/2014/oct/02/labour-partisanship-constitutional-reform-tories-english-mps-laws>>

on the question of independence. The pro-union parties will be in a large majority at Westminster, which should enable them to make common cause on the future of the UK if they want to.

But there will be an early trial of strength with the SNP over implementation of the Smith Commission proposals. The main political parties have all promised to implement the Smith proposals in full in the first session of the new Parliament. Nicola Sturgeon seemed to indicate that she would demand full fiscal autonomy in the first year, but has since backtracked.⁸ The SNP have two powerful levers to push for more. First, they may be in a pivotal position in the new House of Commons, and their votes may be necessary to pass legislation. But second, under the Sewel convention the Scottish Parliament will be asked to pass a legislative consent motion approving any new Scotland Bill. As we saw with the Scotland Act 2012, when the Scottish government and Parliament threatened to withhold their consent, this can amount to a power of veto. This is a trump card which the SNP might try to deploy in the run up to the Scottish parliamentary elections in May 2016. They will want to press for the addition of items deemed popular with Scottish voters, but not put at risk the cushion of Barnett formula funding.

The new Scotland Bill is only the first item in a big constitutional agenda, whoever forms the next government. The full list from both main parties includes the following:

- Stretching devolution further in the next Scotland Bill
- Answering early demands from the SNP government for Smith plus
- Extending devolution in Wales following the St David's Day declaration
- Putting the Stormont House Agreement back on track
- An In/Out referendum on the EU
- Replacing the Human Rights Act with a British Bill of Rights
- A reformed second chamber to represent the nations and regions
- Experimenting with English votes on English laws
- Greater empowerment for English city region
- An English Devolution Bill
- Reducing the number of Scottish MPs
- Reducing the over representation of Welsh MPs
- Reform of the Barnett formula.

1.2 Comparative Federalism and Decentralisation: Some Practical Lessons for the UK

This section will briefly discuss some practical lessons for the UK from other decentralised and federal systems around the world. The UK is hardly unique in facing challenges to its structure and integrity from sub-state nationalities, though it is unique in seeking to do so without a formal written constitution. In practice, all federal systems have written constitutions. It would be hard for the UK to move substantially toward a federal system without a very substantially written constitution.

⁸ 'Scots leaders debate: SNP plan devo max vote' *Scotsman* 8 April 2015; 'Nicola Sturgeon backs down on full fiscal autonomy' *Scotsman* 15 April 2015. Available: <<http://www.scotsman.com/news/politics/top-stories/scots-leaders-debate-snp-plan-devo-max-vote-1-3741326>>

1.2.1 Federal systems and asymmetry

By and large, federal systems are not very asymmetric. There are of course variations in size between constituent units, and representation in state-wide institutions. Some have slightly odd arrangements; special status for certain constituent units, or quirky jurisdictional arrangements. But these do not affect constitutional status, or general functions and powers. There may be variation between countries in how autonomous their constituent units are, but there is only limited variation within a country.

If anything the tendency is toward decentralisation and greater symmetry rather than the contrary; while there are constitutional differences in status between territories in both Canada and Australia, and provinces or states, both sorts of unit have similar functional responsibilities (for health, education, etc). In the case of territories, this is by choice of the central authorities, as the territories have no power to demand or obtain such status. Spain is a particularly interesting case of this – see 1.2.3 below.

1.2.2 Extremes of asymmetry

There are a number of regions that have very high levels of autonomy. Most of these are small and geographically remote communities, often islands, which have limited sense of community with the state of which they are part. Equally, they have little choice, being too small or remote to function as a state on their own. They may also benefit from financial subsidies from the central state. Examples are the Faroe Islands, Greenland, the Azores, Madeira, the Åland Islands. In each case, the populations are a fraction of the state as a whole: often less than 1 per cent. Extensive measures of autonomy not only correspond to local aspirations and practical realities, but do not cost the central state much and may save it problems in ‘managing’ its periphery.

In many ways, these sorts of relationships resemble those between the UK and the Crown Dependencies of Guernsey, Jersey and the Isle of Man, though they are not part of the UK. The Crown Dependencies are all tiny in relation to the UK (collectively, they are less than 0.4 per cent of the UK’s population), and self-governing. They possess full fiscal autonomy, but the UK manages their external relations and provides for their defence. The relationship is mutually convenient, with occasional strains (eg over their tax havens).

A highly asymmetric regime for Scotland – which is about 8.3 per cent of the UK’s population – would be exceptional by these standards, even if it were thought to be manageable in its wider impact on the state.

1.2.3 Spain

Spain is often seen as an asymmetric state similar in some ways to the UK. It started with a highly asymmetric system, with each autonomous community having different functions (and some with very limited ones), as well as different funding arrangements for the Basque Country and Navarre compared to other regions (known as the ‘foral regime’ or Charter). The expectation was that only the ‘historic regions’ of Catalonia, the Basque Country and Galicia would seek extensive devolution, and that other parts of Spain would remain largely

governed from Madrid. But most regions sought to exercise autonomy in a wide range of functions, even ones where the traditionally-centralist *Partido Popular* was the main political force. The policy of 'cafe para todos' led to a narrowing of the differences between regions with more limited functions (like Extremadura) and Catalonia are much narrower, and financing arrangements are now the main form of asymmetry. Spain is now widely considered to be a federal system, though there remains some opposition to use of that term there.

Considered as a federation, however, Spain is remarkably dysfunctional. This is largely attributable to a combination of partisan politics and attempts by the central state to maintain control over matters where it had lost the initiative. Outside the 'foral' regime for the Basque provinces and Navarre, its financing arrangements combined half-hearted fiscal devolution with a grant from the centre. The centre's allocation of its own resources has been driven by partisan politics – so Catalonia has received little by way of infrastructure spending, while Valencia (controlled by the *Partido Popular*) has received lavish funding. The overall resources available to the regions from devolved taxes or revenue-sharing are often insufficient for their needs, leading to the borrowing spree that, in particular, Catalonia undertook. Intergovernmental co-ordination remains weak, with the central state still trying to manage relations bilaterally, and no 'peak' meeting of the prime minister and heads of the regional governments. The vaunted flexibility of the Spanish system, with decentralisation through 'organic laws' passed by the central *Cortes* (parliament), has been undermined by the rejection of the 2006 Statute of Autonomy for Catalonia by the Constitutional Court. This in turn has led to the prospect of Catalan secession – essentially, because there is no other way for Catalonia to vent its grievances.

1.2.4 Bilateral and multilateral relationships

One consequence of constitutional asymmetry is that relations between the central state and its constituent units tend to be managed bilaterally. In more uniform federations the shared constitutional status of the states means they have substantial interests in common. Asymmetric systems do not have that; they exist because they are 'governing by exception', managing a bilateral bargain or a series of bilateral bargains.

The options open to an asymmetric central state are:

- leaving matters to be resolved flexibly, as and when needed; ad hocery as a principle of government, which has been UK practice up to now.
- encouraging multilateralism, so the state can find partners around the table of constituent-unit governments.
- managing bilateralism, so at least it is systematic and forms part of a wider strategy.

We return to managed bilateralism in 3.3.3.

1.3 Fiscal Futures and Welfare

This section explains the devolved taxation and welfare payments in early years, and goes on to discuss:

- The background and scope of devolved taxes and welfare payments that have been enacted, but not yet implemented;
- The draft legislation for changes to devolved taxation and welfare payments proposed by the UK Government in January 2015;
- The arguments over the scope for further devolution of taxes and welfare, and their potential implications for the integrity and effectiveness of the tax and welfare systems.

Taxation and welfare need to be understood in their political context. No governments like imposing taxes. Under the original devolution settlements the devolved governments had significant legislative powers, but almost no tax raising power. But they did not necessarily want tax raising powers. The Scottish government's power to vary income tax by up to 3 pence in the pound was designed not to be used: the economic gain was not worth the political pain. Likewise with the income tax powers proposed for the Welsh Assembly in February 2015: the Welsh government has said it does not want such powers (see 2.2.3).⁹

1.3.1 Devolved taxation in early years

Scotland The Scottish Parliament was granted very modest fiscal powers by the Scotland Act 1998. In the 1997 referendum Scotland had voted Yes to a second question on whether the Scottish Parliament should have the ability to vary the standard rate of income tax by up to 3 pence in the pound. The Inland Revenue (as it then was) was made responsible for administering the Scottish Variable Rate (SVR) through its PAYE (Pay As You Earn) and Self Assessment collection mechanisms. The SVR was never utilised; it was repealed in Scotland Act 2012.

Wales The National Assembly of Wales (NAW) was not granted any power to vary taxes on Welsh taxpayers when it was created in 1998.

Northern Ireland The Finance Act 2012 devolved the long haul rate of Air Passenger Duty for direct flights leaving Northern Ireland to its Assembly.

1.3.2 More recent devolution of tax powers

The Scotland Act 2012 was introduced in response to the recommendations of the Calman Commission (2009).¹⁰ The Scotland Office described it as “the biggest transfer of fiscal powers in 300 years”, but the SNP and others were critical about the limited nature of the changes.¹¹ The legislation enables the Scottish Parliament to set the rate of income tax

⁹ ‘Income tax referendum call sparks political row between Welsh and UK governments’ <http://www.walesonline.co.uk/news/wales-news/income-tax-referendum-call-sparks-8735825>.

¹⁰ Calman Commission, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, (Edinburgh: Commission on Scottish Devolution, 2009). Available: <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/15_06_09_calman.pdf>

¹¹ See Scotland Office, ‘Scotland Bill receives Royal Assent’, 1 May 2012, available: <https://www.gov.uk/government/news/scotland-bill-receives-royal-assent>; STV, ‘SNP dismiss Scotland Bill as “missed opportunity”’, 26 April 2012. Available: < <http://news.stv.tv/politics/305064-snp-dismiss-scotland-bill-as-missed-opportunity/>>

applicable to Scottish taxpayers from 6 April 2016. HM Revenue & Customs (HMRC) is responsible for collecting the tax on behalf of the Scottish Government, which is responsible for the capital and other costs of administering it.¹²

The 2012 Act reduces the basic, higher and additional rates of income tax levied by the UK Government by 10 pence in the pound and provides for a new Scottish rate to be set by the Scottish Parliament to meet the gap. All three rates have to be varied by the same amount, rather than individually. The Act also provided for the total devolution of Stamp Duty Land Tax and Landfill Tax¹³ with effect from April 2015, and the Aggregates Levy. The legislation confers the power to create new devolved taxes to the Scottish Parliament, and for additional taxes to be devolved. The UK Government also agreed new borrowing powers to enable the Scottish Government to borrow to fund capital investment projects, subject to Treasury approval.

Although the new tax would give the Scottish Parliament control over 10 points of the income tax revenue raised in Scotland, the SNP criticised the changes because the level at which income tax became payable (the personal allowance) and the structure of income tax remained under the control of the UK Government, and the Scottish Parliament could only increase or reduce all the rates of income tax simultaneously (in “lockstep”). The Calman Commission’s recommendation that Air Passenger duty be devolved was not implemented. The two taxes wholly devolved to the Scottish Government (stamp duty land tax and landfill tax) accounted for little over 1% of total Scottish tax revenues.

In January 2015 the UK Government published draft legislation to implement the devolution of taxes proposed by the Smith Commission.¹⁴ These include giving the Scottish Parliament the power to set the rates and thresholds of income tax, and power to introduce new rates and bands of income tax above the UK-wide personal allowance. All other aspects of income tax will remain reserved to the UK Parliament. The Scottish Government will receive all income tax paid by Scottish taxpayers with a corresponding adjustment in the block grant received from the UK Government. Another important concession by the UK Government was the agreement to assign to the Scottish Government’s budget the first 10 percentage points of the revenue attributable to Scotland from the standard rate of VAT.¹⁵

The UK Government has agreed to devolve Air Passenger Duty in Scotland, and the Scottish Government will be free to make its own arrangements with regard to the design and collection of any replacement tax.

¹² HMRC and the Scottish Government have jointly agreed a Memorandum of Understanding on the Scottish Rate of Income Tax (2013). HMRC has also published the Technical Note *Clarifying the Scope of the Scottish Rate of income tax* (December 2012), available:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389889/SRIT_Consequential_TechNote_vFinal.pdf>

¹³ Stamp duty Land Tax was modernized and replaced by a Land & Buildings Transaction Tax (LBTT). The LBTT and Scottish Landfill Tax are administered by Revenue Scotland, the new Scottish tax authority established in 2014 as a non-ministerial department to administer devolved taxes within the Scottish Government. There was bemusement in Scotland when the Chancellor of the Exchequer announced at Autumn Statement that he was proposing to reform UK Stamp Duty Land Tax; it was alleged that the changes he proposed were very similar to the recently introduced Scottish LBTT.

¹⁴ HM Government, *Scotland in the United Kingdom: An enduring settlement*, Cm 8890, (London: January 2015), available: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf>

¹⁵ In fact, the UK Government also proposes to assign the first 2.5 percentage points of the revenue attributable to Scotland from the 5 per cent reduced rate.

Wales

The Silk Commission appointed by the Welsh Secretary in 2011 recommended in its first report that the power to set income tax rates (Welsh Rate of Income Tax), Stamp duty Land Tax, Landfill Tax, Air Passenger Duty and Aggregates Levy be devolved to the National Assembly of Wales.¹⁶ The UK Government's response was enacted in The Wales Act 2014. The Act provides that a referendum *can* be held to decide whether the Welsh Assembly should have the power to vary income tax, without requiring one. It also gives the Welsh Government control over Stamp Duty Land Tax and Landfill Tax, and new borrowing powers.

Northern Ireland

In his Autumn Statement 2014, the Chancellor announced the UK Government's intention to devolve the power to set corporation tax (CT) rates to the Northern Ireland Assembly.¹⁷ The Corporation Tax (Northern Ireland) Act was passed in March 2015. The Northern Ireland Executive will need to bear the fiscal consequences, so the block grant would be adjusted to reflect the fiscal costs of any reduction. The tax would be levied on trading profits only. The tax base, including reliefs and exemptions, will remain under the control of the UK Government. The earliest financial year for which Northern Ireland could set its own rate is 2017.

In Scotland, the Smith Commission had recommended that corporation tax should remain a reserved matter. It accepted representations from businesses that any change would result in significant administrative costs, and that competition might result in a "race to the bottom", reducing revenues for both the Scottish and UK Governments.¹⁸ The Silk Commission also concluded that corporation tax should remain reserved, but that if the power to set CT rates was granted to Scotland and Northern Ireland, the same powers should be given to Wales.¹⁹ The UK Government has maintained that the grant of CT rate setting powers to Northern Ireland reflects its unique economic position within the UK: it shares a land border with the low corporation tax environment of the Republic of Ireland; it is more dependent on the public sector; its income *per capita* has been persistently below the UK average; and it has to deal with the legacy of the sectarian violence.

1.3.3 Devolution of welfare

Neither the Scottish Parliament nor the Welsh Assembly were granted any powers to vary welfare payments directly administered by the UK government when they were created. In contrast, the Northern Ireland devolution settlement in the Northern Ireland Act 1998 gave the Assembly direct legislative control over both social services and social security. Under

¹⁶ Commission on Devolution in Wales *Empowerment and Responsibility: Legislative Powers to Strengthen Wales* (Silk Commission: Cardiff, 2014), available: <<http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/>>

¹⁷ See House of Commons Library, *Devolution of Corporation Tax to Northern Ireland*, SN/7078, February 2015. Available: <www.parliament.uk/briefing-papers/SN07078.pdf>

¹⁸ Simon Johnson, 'Lord Smith: Scotland's politicians should stop "coveting" corporation tax', *Daily Telegraph*, 2 December 2014. Available: <<http://www.telegraph.co.uk/news/uknews/scotland/11268525/Lord-Smith-Scotland-must-stop-coveting-corporation-tax.html>>

¹⁹ See Commission on Devolution in Wales, p7.

the parity principle, its social security arrangements have continued to mirror those in the UK.

The UK Government has agreed a degree of devolution of welfare to the Scottish Parliament following the independence referendum. Under Schedule 5 of the Scotland Act 1998 social security was largely a reserved matter until the Coalition Government's welfare reform agenda allowed the "localisation" of some benefits.²⁰ The Calman Commission did not propose any significant devolution of welfare to Scotland; instead, it specifically recommended that Attendance Allowance and Disability Living Allowance should not be devolved because their interdependence with other benefits had potential "knock-on" consequences.

The Smith Commission went much further. State Pensions, Universal Credit and Pension Credit would remain reserved. Following the Smith proposals, the UK government has agreed that the Scottish Parliament will be given the power to vary the housing element of UC in Scotland and UC payment arrangements. It will also take over responsibility for certain benefits outside UC, including Disability Living Allowance, Attendance Allowance, Personal Independence Payment, Carer's Allowance, Disablement Allowances, Winter Fuel Payments and Cold Weather Payments, and Discretionary Housing Payments.²¹

The UK Government has accepted that the Scottish Parliament should have "complete autonomy" over these benefits, or over any benefits or services which might replace them; subject to consultation with the Department of Work & Pensions (DWP). Devolution of these powers is to be accompanied by an increase in the block grant equivalent to the existing level of spending in Scotland on the benefits (currently around £2.5 billion a year). The Scottish Parliament will also have new powers to make additional discretionary payments at its expense in any area of welfare without prior permission from the DWP.

The SNP has suggested that the powers in the draft clauses are more narrowly defined than they had been led to expect from the Smith proposals.²² The changes proposed nevertheless give the Scottish Parliament control over nearly 15% of the current government spending of over £18bn on welfare in Scotland, around one quarter of all welfare spending outside the state pension.

Neither the Welsh Assembly nor the Northern Ireland Assembly has been offered any new powers over welfare. Nor does there seem to be any particular clamour from these assemblies for parity of treatment with Scotland; nor any inclination on the part of the UK Government to offer it.

1.3.4 Scope for future changes in devolved taxation and welfare

Given its aspiration for an independent Scotland, the SNP-led Scottish Government has continued to argue, as it did in its submission to the Smith Commission, that all taxes raised

²⁰ The Scottish Government now has responsibility for the Scottish Welfare Fund, the Council Tax Reduction Scheme, and the power to limit discretionary housing payments.

²¹ See Smith Commission pages 18-20.

²² Libby Brooks, 'Nicola Sturgeon: draft bill "waters down" Smith Commission promises', *The Guardian*, 22 January 2015. Available: < <http://www.theguardian.com/politics/2015/jan/22/nicola-sturgeon-smith-commission-scotland-first-minister-danny-alexander-uk-veto> >

in Scotland should be the responsibility of the Scottish Parliament. There is no sign that the UK Government will volunteer further devolution, at least until after the enactment and implementation of the changes it has promised.

Securing the ability to vary the rate of corporation tax is a key priority for the Scottish Government. It has argued that devolution of the power to set corporation tax to Northern Ireland has undermined the case for denying it the same powers. It has recently abandoned its plan to cut corporation tax significantly below the UK rate if the Scottish Parliament is given this power. This may be in response to representations from the CBI and other bodies that the UK rate is already internationally competitive, and that a lower Scottish rate would literally be “beggar thy neighbour” opportunism.²³

It may also press for the devolution of Capital Gains Tax and Inheritance Tax, and the power to set the Minimum Wage in Scotland. As things stand, the main impact which most Scottish taxpayers will experience of the Scottish Government’s new tax powers will be its decision in relation to the Scottish Rate of Income Tax. The current Scottish Parliament would have to pass a Resolution by 5 April 2016²⁴ to set the rate for 2016/17 (it would, in practice, be announced in the Scottish Budget in September or October 2015). If there were a new Scottish Government following the next elections for the Scottish Parliament in May 2016, it would be unable to change the rate in-year.

It would be prohibitively expensive for the Scottish Government independently to maintain the current level of UK welfare payments such as the State Pension and Child Benefit, let alone to better them. Contributory benefits such as the State Pension are funded out of the National Insurance Fund (NIF) to which all National Insurance contributions have to be credited. If there is any future deficiency in the NIF, it is effectively underwritten by the UK Consolidated Fund i.e. general UK taxation. If, on the other hand, the Scottish Parliament was to seek “its” share of the current NIF (which is in fact an accounting identity rather than a pool of assets), Scotland would lose the safety provided for the continuity of welfare payments at their current level provided by the Consolidated Fund.²⁵

1.4 The European context

A number of interlinked planned initiatives fall to be played out against a volatile background:

- An In/Out referendum on the EU, to be held after negotiations to revise the terms of UK membership. Both would happen while serious uncertainties about the future of the Euro continued, and where EU foreign and defence policy stances remained under pressure.
- Plans for a UK Bill of Rights and Responsibilities to modify provisions of the European Convention on Human Rights (ECHR) and make judgements of the European Court of Human Rights (ECtHR) advisory only have implications for relations with both the Council of Europe (CoE) and the EU.

²³ Mure Dickie, ‘SNP drops corporation tax cut goal’ *FT*, 3 March 2015. Available: <<http://www.ft.com/cms/s/0/675767ee-c1c5-11e4-abb3-00144feab7de.html#axzz3XqoSR8ac>>

²⁴ Section 80C of the Scotland Act 1998 - as inserted by the 2012 Act.

²⁵ It is unsurprising that the Smith Commission recommended that National insurance Contributions remain a reserved matter.

- Such proposed changes would confront devolved legislatures where majorities wish to stay in the EU and the ECHR.

1.4.1 The EU

Under the coalition government's European Union Act 2011, any substantial change to the EU treaties requires approval by referendum and, where accepted, statutory recognition. The Liberal Democrats supported the 2011 Act in their 2015 manifesto, stressing that any referendum under the 2011 Act should be on the in/out question. While the Labour Party's 2010 manifesto nailed its colours firmly to the EU mast and has reaffirmed that position in its 2015 manifesto, it now promises to legislate that there may be no transfer of powers to the EU without the consent of the British public through an in/out referendum.

Although the three main parties' 2015 manifestos speak of wanting to reform the EU to promote/defend British interests, the Conservative party intends to go further. Facing pressure on its EU policies from its own 'euro-sceptic' MPs and from the UK Independence Party (UKIP), the Conservative party is committed to seeking unspecified changes to the EU treaties before putting the outcome to a referendum in 2017 on whether the UK should stay in the EU. The leadership's motivation is primarily to preserve party unity.

This stance has to be understood alongside long term developments which have increasingly made the Conservatives close to an England only party. These trends have eaten away at its unionist credentials and legitimacy. Its present EU policies will bring it into collision with all three devolved countries, the governments of two of which – Scotland and Wales - have shown interest in individual country vetoes, the Scottish government explicitly demanding that exit should follow only if a referendum showed majorities for exit in *all* four parts of the UK.²⁶ On that basis any UK government prepared to take the UK out of the EU would therefore risk breaking up the UK. A further twist is that Gibraltar (a British Overseas Territory) has said that it wishes to remain in the EU.²⁷

The most recent polling, however, shows that the position of electors is more nuanced than that of some devolved governments.²⁸ Whilst fewer in Scotland (22%) than in England (31%) think that the long-term strategy should be to leave the EU, just as many in Scotland (46%) as in England (43%) think that the long-term strategy should be to remain in the EU but work to reduce its powers. Moreover, in all four countries there is no support for country vetoes: clear majorities in England (68%), Wales (64%) and Northern Ireland (60%) believe that an overall majority across the UK as a whole should be determinative. Although the majority in Scotland for a UK-wide count was smaller at 55%, the minority supporting country vetoes was at 45% still substantial.

It cannot be guaranteed, of course, that the current spread of opinion will remain stable: differences on strategy and support for veto positions could grow. Such dangers would be avoided if there were any disposition amongst EU states to accommodate likely UK

²⁶ Libby Brooks, 'Nicola Sturgeon calls for Scottish veto on EU referendum', *The Guardian*, 29 October 2014. Available: <<http://www.theguardian.com/politics/2014/oct/29/nicola-sturgeon-scottish-veto-eu-referendum>>

²⁷ 'Gibraltar suggests it wants to stay in EU in event of Brexit' *Daily Telegraph* 14 April 2014, available: <<http://www.telegraph.co.uk/news/worldnews/europe/gibraltar/11534580/Gibraltar-suggests-it-wants-to-stay-in-EU-in-the-event-of-Brexit.html>>

²⁸ 'New research on attitudes to UK constitutional change released' University of Edinburgh, 16 March 2015. Available: <http://www.aog.ed.ac.uk/news/last_3_months6/new_research_on_attitudes_to_uk_constitutional_change_released>

proposals for change. However, there are no signs that the EU would be responsive, above all to any proposals that required treaty change and therefore the unanimous agreement of all 28 EU states.²⁹ On the contrary, there could be active hostility to UK approaches as narrowly and irritatingly self-interested. Continuing problems with a slow economic recovery, the fragility of the Euro and a resurgent Russia would be regarded as much more important than UK domestic difficulties.

Finally, it is uncertain what might be the future in the EU for any devolved part of the UK that left the UK.³⁰ Automatic continuation in the EU would not be possible or regarded positively by those EU states themselves anxious about maintaining their own political integrity. Unknowable is the extent to which such uncertainty might deter departure from the UK when there were marked preferences for staying in the EU. Quite separate considerations would apply to a Northern Ireland reluctant to leave the EU since there could be repercussions affecting the peace settlement itself.

1.4.2 The ECHR and ECtHR

Domestic UK law varies within the UK as the table below summarises:

Table 1.2 Varying human rights regimes in different parts of the UK

	England	Scotland	Wales	N Ireland
	UK HRA 1998	UK HRA 1998	UK HRA 1998	UK HRA 1998
Human Rights Commissions		Scottish Commission for Human Rights Act 2006		NI Human Rights Commission ³¹ under s. 69 NI Act 1998 [as per Belfast Agreement]
Equalities legislation 2006	Equality Act 2006 (GB only)	Equality Act 2006 Sch 1	Equality Act 2006 Sch 1	Act not extended to N Ireland but an NI Equality Commission was established under s. 73 of the NI Act 1998 [as per Belfast Agreement]
Equalities Commissions	Equality and Human Rights Commission	EHRC Scotland Committee	EHRC Wales Committee	

²⁹ See Almut Möller and Tim Oliver, *The UK and the EU: what would a Brexit mean for the EU and other states around the world?* DGAP, September 2014. Available: <<https://dgap.org/en/think-tank/publications/dgapanalysis/united-kingdom-and-european-union>>

³⁰ 'Scottish independence: Would Scotland be in the EU after a yes vote' *BBC News*, 29 April 2014. Available: <<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-26173004>>

³¹ The Commission was tasked under the Belfast Agreement to advise on the case for a Northern Ireland Bill of Rights. Its recommendations submitted on 2008 have not yet been accepted. For further details see, Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland*, 10 December 2008. Available: <<http://www.nihrc.org/uploads/publications/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>>

	(EHRC)			
Equalities legislation 2010	Equality Act 2010 (whole act)	Equality Act 2010 (with some exceptions)	Equality Act 2010 (whole act)	Equality Act 2010 (certain clauses only)
UK Parliamentary oversight	Westminster Joint Committee on Human Rights [JCHR]	JCHR	JCHR	JCHR
Devolved legislatures		Scottish Parliament Justice Committee	No standing committee	Justice Committee of Northern Ireland Assembly

[Note: By virtue of the relevant provisions in the devolution acts, the devolved legislatures are prohibited from legislating to alter the HRA 1998 but not from supplementing the arrangements locally.]

Although adverse findings against the UK have been rare and the UK has generally a very good record including of compliance with ECtHR judgements, some of the latter have continued to rankle. These have included judgements concerning prisoner voting rights and refusals to sanction deportations of alleged terrorists and serious criminal offenders. Such findings have been regarded as being too insensitive to local preferences otherwise consistent with ECHR principles. A number of these rubbing points were addressed in the UK led initiative of the 2012 Brighton Declaration, now in the form of Protocol 15 open for states' accession.³² However, the Conservative Party is committed to replacing the Human Rights Act with a British Bill of Rights, still claimed consistent with ECHR rights but not necessarily its machinery. Although the Conservative 2015 manifesto does not specifically say so, it is believed to be prepared to leave the ECHR if the Council of Europe deems the plans unacceptable.

Table 1.2 illustrates the extent to which the devolved legislatures have developed human rights and equalities regimes increasingly distinct from those applying in England. Changes introduced by the Wales Act 2014, for example, could lead to Wales passing legislation on the lines of the Scottish Commission for Human Rights Act 2006.

In addition, legislative consent motions by the devolved government to fresh 'repatriating' UK ECHR legislation would by no means automatically be forthcoming. If a UK government wished nonetheless to go ahead, it might be able to do so in respect of England only. This would not only frustrate its intentions but also risk increasing sentiment in the rest of the UK in favour of further weakening or even leaving the union. The Northern Ireland Human Rights Commission originated in the Belfast Agreement, an international treaty. Opposition to any attempt to water down the Agreement's guarantees could be expected to be particularly strong, and have repercussions on the stability of the 1998 peace settlement as well as implications for the UK's relations with the Republic of Ireland.

³² See European Court of Human Rights, *High level conference on the future of the European Court of Human Rights, Brighton Declaration*, 20 April 2012. Available: <http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf>

Moreover, when ECHR standards have become regarded as the gold standard of international human rights respectability, further risks could be run. Not only could the UK come under pressure to withdraw from the CoE itself, but that withdrawal might also encourage countries with poorer compliance records to think of doing the same, to the further detriment of one of the most enduring parts of the post-1945 European settlements.

Finally, an EU dimension should not be overlooked. For some time, the EU has expected members to be fully signed up to the ECHR and, indeed, has been exploring whether the EU could accede to the ECHR in its own right. Although that initiative in its latest form has been rejected by the European Court of Justice,³³ the CoE in its recent Brussels Declaration³⁴ strongly supported the idea, further reinforcing the expectation that ECHR membership should be regarded as an EU norm. So entrenched has this EU policy become that commentators have wondered whether renunciation of the ECHR could be compatible with remaining in the EU.³⁵

1.5 The political and electoral context

Since the 1950s the party system has become more and more fragmented, in two respects. The first is the erosion of the dominant two party system and its evolution into a multi party system. The second is that this multi party system includes nationalist and separatist parties whose avowed aim is the break up of the Union. The emergence of a multi party system makes it less likely that Westminster will have strong, stable, single party government. The weaker minority or coalition governments that result may be less able to withstand the pressures on the Union, especially if they are dependent on nationalist parties for support

1.5.1 Rise of multi party system, and minority or coalition government

The decline of the two party system is well documented. In the 1950s the two major parties gained over 95 per cent of the popular vote. In 2010 their vote share had shrunk to 65 per cent.

³³See Court of Justice of the European Union, Press Release No 180/14, available:

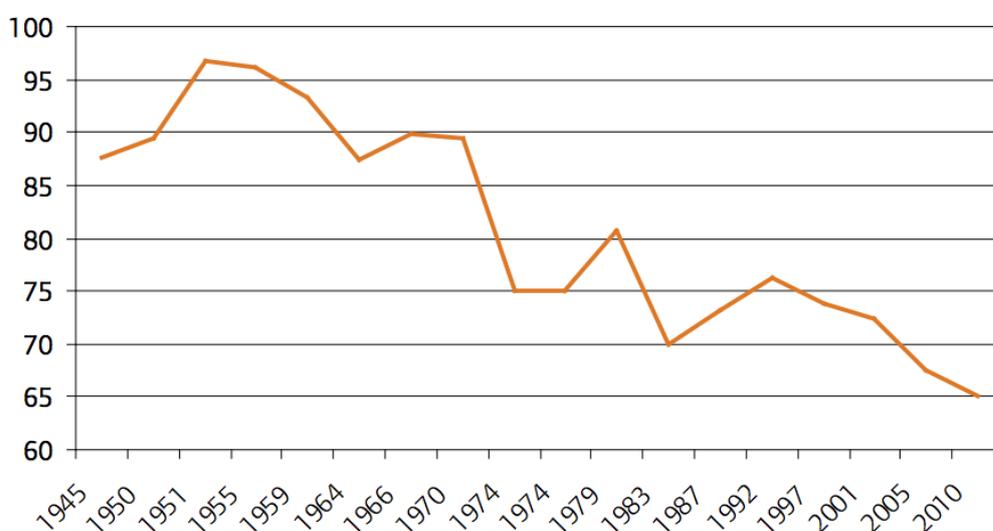
<<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140180en.pdf>>

³⁴High level conference on the "Implementation of the European Convention on Human Rights, our Shared Responsibility", Brussels, 27 March 2015, available:

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802ef2f9>>

³⁵Council of Europe, Directorate of Policy Planning, *The Council of Europe without the UK?* 18 November 20, available: <http://www.coe.int/t/policy-planning/ALER_T/Synopses/ALER-T_44.pdf>

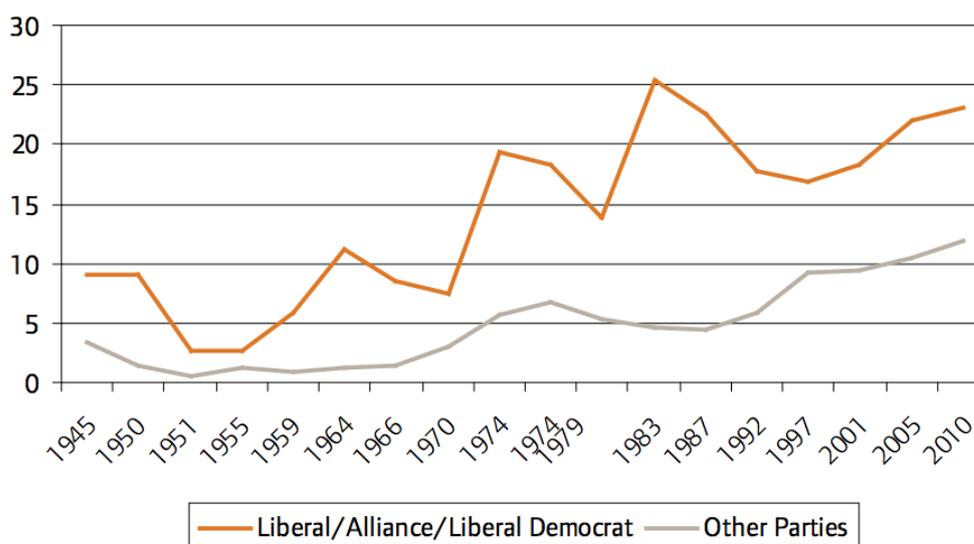
Fig 1.3: graph showing vote share of main political parties since 1945



Source: John Curtice, in Guy Lodge and Glenn Gottfried, *Worst of both worlds: why first past the post no longer works*, IPPR, January, 2011. Available: <http://www.ippr.org/publications/worst-of-both-worlds-why-first-past-the-post-no-longer-works>

The reason for the decline in vote share of the two major parties was the rise of the Liberal Democrats and other minor parties, illustrated in Figure 1.4:

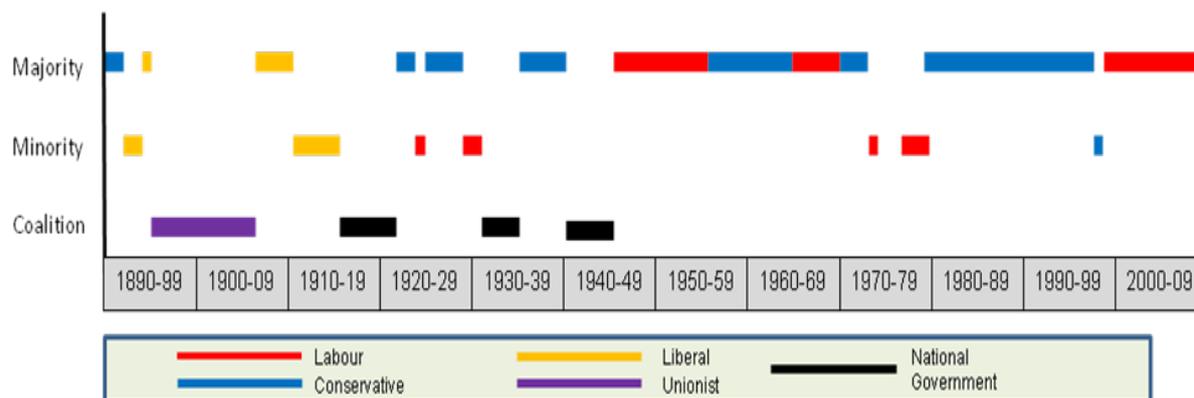
Figure 1.4 The rise of the Liberal Democrats and minor parties since 1945



Source: as for Fig 1.3.

Third and minor parties have steadily won more seats in the House of Commons, gaining 93 seats in 2005 and 86 in 2010. This makes it harder for a single party to win an overall majority, and hung Parliaments are more likely in future. Single party majority governments have been the dominant form of government at Westminster since 1945; but hung parliaments were more common in the first half of the 20th century. Of the 20 governments in that century, half were minority governments or coalitions, with five of each.

Fig 1.5: Minority, coalition and majority governments 1900 to 2010



Source: Institute for Government and UCL Constitution Unit, *Making Minority Government Work: hung parliaments and the challenges for Westminster and Whitehall*, December 2009, p18. Available: <<http://www.instituteforgovernment.org.uk/publications/making-minority-government-work>>

Coalition and minority governments are not as strong or stable as single party majorities. Coalitions suffer inevitable tensions, with coalition partners needing to maintain their distinctiveness to the electorate. Minority governments must build mini coalitions with one or more opposition parties to get any legislative measure through Parliament. This can result in gridlock; but opposition parties cannot unthinkingly oppose. As the SNP minority government found in Scotland in 2007-11, opposition parties may not want to become responsible for blocking the budget, or forcing early elections. Minority governments can achieve a lot so long as they recognise the need for cross party support, and do not seek to govern in a majoritarian way. New Zealand has been governed by coalition and/or minority governments for most of the last 20 years, no less effectively than when it had a dominant two party system.³⁶

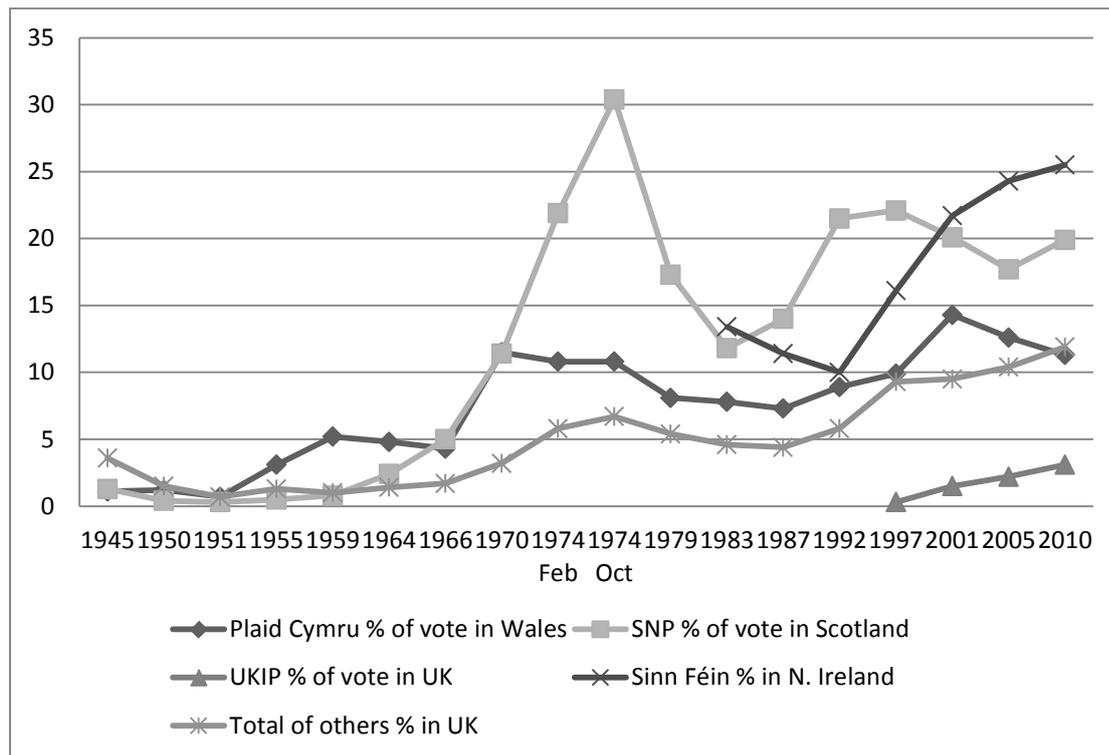
1.5.2 Rise of nationalist and separatist parties

The multi party system results in part from the rise of nationalist and separatist parties: the SNP, Sinn Fein, Plaid Cymru and UKIP. Devolution gave a boost to the nationalist parties by providing a new sphere of electoral competition, and a new platform from which to broadcast their separatist message, while also giving them the opportunity to demonstrate

³⁶ See Institute for Government and UCL Constitution Unit, *Making Minority Government Work: hung parliaments and the challenges for Westminster and Whitehall*, December 2009, pp38-53. Available: <<http://www.instituteforgovernment.org.uk/publications/making-minority-government-work>>

their competence in government at the devolved level. This has significantly boosted their electoral popularity. The unionist parties remained dominant at Westminster elections, but recently the SNP has broken the mould, with polls forecasting that they may gain as many as 50 out of the 59 Scottish seats. Sinn Féin has also broken through in the Republic of Ireland, with polls suggesting it may become the largest single party.³⁷ But in Wales Plaid Cymru has not broken the dominance of the Labour party, gaining only half Labour's number of seats, and not improving over the first four Assembly elections.³⁸

Figure 1.6: the rise of nationalist and separatist parties, 1945 to 2010



'Others' refers to the share of the UK vote secured by all parties other than the Conservatives, Labour and Liberal Democrats (including Liberals/SDP). Figures taken from House of Commons Library Research Paper 12/43, *UK Election Statistics 1918-2012*. Available: <<http://www.parliament.uk/business/publications/research/briefing-papers/RP12-43/uk-election-statistics-19182012>>

This surge of nationalist and separatist parties is partly explained by their 'anti-politics' stance. UKIP is most obviously a party of protest, but parties like the SNP successfully position themselves as anti Westminster politics and the traditional Westminster parties. Populist, anti politics parties threaten the legitimacy of the system, and make it harder for governments to govern when their authority is persistently under attack. The crisis of legitimacy may turn into a crisis of confidence if those same governments are seen as weak and ineffective.

³⁷ Henry McDonald, 'Sinn Féin tastes electoral success north and south of the Irish border' *The Guardian*, 25 May 2014. Available: <<http://www.theguardian.com/politics/2014/may/25/sinn-fein-gains-elections-gerry-adams>>

³⁸ 'Plaid Cymru: can they emulate the SNP?' *C4 News*, 31 March 2015, available: <<http://www.channel4.com/news/plaid-cymru-wales-party-general-election-2015-key-questions>>

The anti-politics climate is exacerbated by the strident anti politics stance of much of the press, and in the new social media. Bloggers such as Guido Fawkes, groups such as Anonymous, or the Occupy movement command sizeable followings. The mainstream press has followed suit by sensationalising and lashing out to drive up sales. Their support has been fuelled by the political system's own failures, most famously in the parliamentary expenses scandal, but also by a feeling that the system is unresponsive to people's needs. While public disaffection is hardly new, public trust in politicians is lower than it has ever been.³⁹

1.5.3 Will the multi party system lead to a change in the electoral system?

The future of the Union is more directly threatened by the rise of nationalist parties than by the emergence of a multi party system. If the multi party system is here to stay, leading to frequent hung parliaments, then there could be a gradual transition from a majoritarian political culture to more pluralist, consensual politics of the kind found in most European countries (see 3.3.8). Such a shift might help the UK to become more comfortable with the regular compromises required in EU politics, because compromise will become a stronger feature of domestic politics as well.

The multi party system may eventually force change to the electoral system. The AV referendum was convincingly defeated in 2011, by 2 to 1 on a turnout of 42 per cent.⁴⁰ But first past the post operates unpredictably in a multi party system. The issue might come back on to the agenda if an election throws up a 'wrong winner', and one of the major parties becomes converted to electoral reform. That is how the issue has been taken up in Canada, but although five out of Canada's ten provinces have established expert commissions or citizen's assemblies to devise alternative voting systems, none has yet switched from first past the post.

Hung parliaments resulting from the multi party system will give greater leverage to nationalist parties, if their support is required to form a government at Westminster. As the price of that support, they can demand policy concessions giving preferential treatment to their part of the country. Unionist parties and the UK government will need to be very clear how much more power can be devolved, and how much preferential treatment can be allowed, before it starts to undermine the fundamental social contract which underpins the UK state, and the governmental operations which give effect to that. That is explored further in Part 2.

1.5.4 The resurgence of Parliament

Parliament is depicted in the media as an institution in terminal decline; but in fact it is growing more and more effective. Select Committees in both Houses are better organised,

³⁹ 'Trust in MPs at crisis point, campaigners say', *BBC News*, 20 October 2014. Available: <<http://www.bbc.co.uk/news/uk-politics-29682077>>

⁴⁰ 'Vote 2011: UK rejects alternative vote' *BBC News*, 7 May 2011. Available: <<http://www.bbc.co.uk/news/uk-politics-13297573>>

better supported, and more independent minded now that their chairs are elected rather than chosen by the Whips. The Backbench Business Committee has broken the parties' monopoly of the parliamentary agenda. Legislation is better scrutinised with pre-legislative scrutiny of draft bills, Public Bill Committees which can take evidence, and scrutiny from specialist committees like the Joint Committee on Human Rights. And parliamentarians are becoming ever more independent minded and rebellious. The 2010-2015 parliament saw large numbers of backbench rebellions, some with long-lasting effects. The first session set new records, with more rebellions in 2010-12 than in the 20 years from 1945-1966. The following sessions produced high profile backbench rebellions over the EU, House of Lords reform and military action in Syria.⁴¹

It might be thought that government MPs will be less rebellious if in future the government has a small or no majority. But the Maastricht rebellions suggest not; and Phil Cowley's work suggests that rebelliousness is learned behaviour, which spreads. Westminster is no longer so executive dominated, and governments cannot take Parliament for granted. This is even more so in the House of Lords, where for the last 15 years no government has had a majority.⁴² Between 1997 and 2010 the Labour government was defeated over 500 times, or one vote in three; since 2010 the Conservative – Lib Dem coalition has been defeated on one vote in five.⁴³ To get their measures through governments must obtain support from other parties or the cross benchers, and must be more willing to compromise.

1.6 Public participation

The idea of a Citizens' Convention has been promoted by Labour and supported by the Liberal Democrats, as a way of taking debates about devolution and the future of the Union beyond the political parties, and harnessing levels of public engagement of the kind seen in Scotland.⁴⁴ It would include a minority of politicians, to build cross party consensus, and with the help of expert advisers seek to develop a more coherent overall reform package, rather than further piecemeal reforms.

The challenges are to devise an agenda and terms of reference which are manageable, and deliverable within a realistic timescale. Fig 3.1 at the end of Part 3 illustrates some of the timing difficulties: legislating for the Smith proposals in Scotland and the St David's Day process in Wales cannot be delayed on the grounds that everything must be referred to the Convention. A cross-party Convention on the future of the Union would need the support of the devolved governments and the other political parties. If the devolved governments turn away, the convention might be asked initially to address the English Question. If the parties

⁴¹ See Philip Cowley, 'The Coalition and Parliament' in Anthony Seldon and Mike Finn, *The Coalition Effect 2010-2015*. Cambridge, 2015.

⁴² See Meg Russell, *The Contemporary House of Lords: Westminster Bicameralism Revisited*, OUP, 2013.

⁴³ Meg Russell and Maria Sciarra, 'Why does the Government get defeated in the House of Lords?: The Lords, the Party System and British Politics'. *British Politics* 2(3) 2007, 299-322.

⁴⁴ See Labour Party Press Office, 'Constitutional convention for the UK; a dynamic new political settlement for England and Britain.' 19 September 2014, available: <<http://press.labour.org.uk/post/97885913129/a-constitutional-convention-for-the-uk-a-dynamic>>; and David Laws, Labour put aside partisanship on the constitution. Now the Tories must do the same', *The Guardian*, 2 October 2014. Available: <<http://www.theguardian.com/commentisfree/2014/oct/02/labour-partisanship-constitutional-reform-tories-english-mps-laws>>

do not want to be involved, they would not be represented, and it might become purely a Citizens' Convention.

The desire for cross party support is understandable, but in practice most constitutional reforms in the UK have been introduced without it. The Reform Acts of 1832 and 1867, the Parliament Acts 1911 and 1949, the devolution Acts of 1998, the Human Rights Act 1998 and the House of Lords Act 1999 were all opposed and carried against the votes of the parliamentary opposition. Citizens' assemblies have also been less successful as launch pads of reform than their proponents sometimes acknowledge. If the measure of success is subsequent constitutional change, then the citizens' assemblies in British Columbia (2004), Ontario (2006), the Netherlands (2006), and Iceland (2009-10) have all ended in failure, because their proposals were ignored by the government or rejected by the people in referendums. So the key to success is to link the Convention into the political process, which Ireland sought to do by including politicians in the membership of the Irish Constitutional Convention (2012-14). But even there, most of its proposals have been sidelined, with the government accepting just four out of its 38 recommendations so far.⁴⁵

So the design of a convention needs to be carefully thought through, as well as its agenda and timetable. A convention may be established for several reasons:

- To build cross party consensus for further constitutional reforms
- To harness expert opinion to chart a way forward
- To develop a more coherent overall reform package, rather than further piecemeal reforms
- To bring in ideas from outside the political elite
- To create greater legitimacy and support for the convention's proposals
- To generate wider participation through innovative methods of public engagement.

To expect a convention to achieve all of these purposes may be to overload it with too many expectations. A citizens' convention should not be seen as a panacea for all the UK's constitutional problems. Nor should it be seen as the only way forward. If the objective is to build cross-party consensus, then cross-party talks may be a better vehicle (as in the cross party talks which preceded the Belfast agreement, or the talks on further devolution to Scotland led by Lord Smith of Kelvin). If the main objective is to harness expert opinion, then the best vehicle may be an expert commission. In recent years expert commissions have been used to chart the way ahead to further devolution, with the Calman Commission in Scotland leading to the Scotland Act 2012, and a series of commissions (Richard, Jones Parry, Holtham, Silk 1 and 2) leading to the grant of further legislative powers to Wales.⁴⁶

Citizens' conventions can also be oversold as a means of generating public participation, when less than 0.00001 per cent of the population can participate in the convention.⁴⁷ That

⁴⁵ David Farrell: Constitutional Convention 'brand' is in jeopardy, Irish Times 17 March 2015.

<http://www.irishtimes.com/opinion/david-farrell-constitutional-convention-brand-is-in-jeopardy-1.2142826>.

⁴⁶ See 'The Commission on the Powers and Electoral Arrangements of the National Assembly for Wales' (the Richard Commission) 2004; 'The All Wales Convention' (chaired by Sir Emyr Jones Parry) 2009; 'The independent commission on funding and finance for Wales' (the Holtham Commission) 2010; 'The Commission on Devolution in Wales' (Part 1 of the Silk Commission), 2012; 'The Commission on Devolution in Wales' (Part 2 of the Silk Commission), 2014.

⁴⁷ If 200 citizens participated out of the UK's 45 million voters, they would represent 0.000004 per cent of the voting population.

is why any convention needs to try to generate wider participation through lots of different methods of public engagement (broadcasting its proceedings, social media etc). The best way of generating wide public participation is a referendum, because then everyone can participate. But it is important to allow sufficient time for public participation and debate. There was plenty of time in the Scottish independence referendum. By contrast the AV referendum in 2011 allowed just three months between legislation and the referendum, leaving very little time for public education.

Part 2 Slipping sideways into the Future

2.1 More devolution in Scotland

Ron Davies was referring to Wales when he famously described devolution as a “process not an event”, but his description fits Scotland well. In less than two decades, the governance of Scotland has moved from administrative devolution to executive, legislative and now fiscal devolution on a wide scale. How much further can it go?

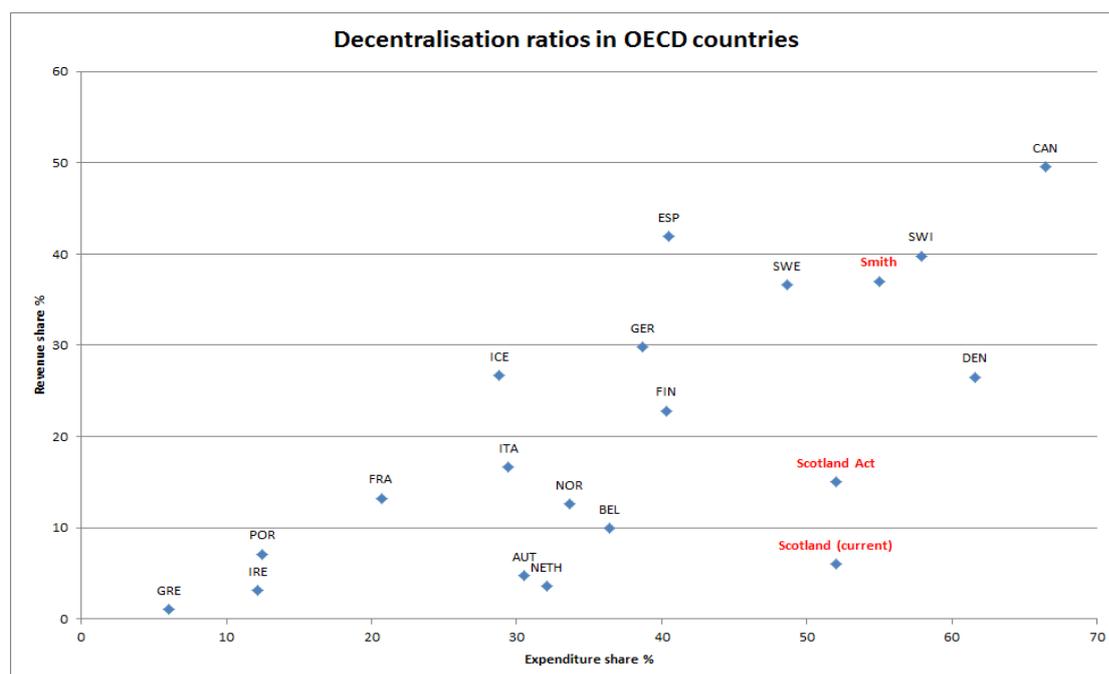
Additional devolution has been a response to political pressure. Labour's commitment to devolution in 1974 followed SNP electoral success; Calman and the Scotland Act 2012 followed the SNP's 2007 success; Smith was a response to referendum polling, and the width of its proposals to the immediate post referendum climate. But the Scotland Act 1998 was built on extensive political and official preparation; Calman on very substantial analysis and consultation. Smith was a political scramble and significant issues of implementation remain to be sorted out. Any post-election deal in May 2015 could be very hurried, like Smith, and the potential for poor policy all the higher.

2.1.1 Dimensions of devolution: spending and taxation

The long history of administrative devolution meant the Scottish Parliament of 1999 inherited very wide spending responsibilities. By 1999 roughly half of spending was devolved. The main spending programmes reserved (aside from defence and foreign affairs) were pensions and welfare, and the main policy area macroeconomic management.

But the only taxes devolved were local taxes: less than 5% of tax revenue, supporting only about 10% of devolved spending. Spending is easier to devolve than tax, but such a mismatch between spending and tax decentralisation is unusual by international standards. The steps from the Calman Commission onwards to Smith recommendations have changed this picture markedly. The Scotland Act 2012 made devolved taxes approach 30% of spending from April 2016 onwards. Smith has taken this much further: devolving more taxes and assigning half of VAT. This has produced a devolved parliament with powers comparable to those of the most decentralised of federal systems: with more spending power and more tax responsibility than most, very close to Switzerland and exceeded only by Canada.

Figure 2.1 Decentralisation ratios in 17 OECD countries, and Scotland



Source: Stirling University analysis of OECD data, updating table in McLean, I. Gallagher, J. Lodge, G, *Scotland's choices: the referendum and what happens afterwards* (Edinburgh: Edinburgh University Press, 2013).

So it is reasonable to ask whether there is much further the UK can go and remain stable. Especially given the small size of the UK, the high degree of its economic integration, and the asymmetry of devolution. The first approach (consistent with the legislative structure of Scottish devolution) is to ask what needs to be reserved to sustain the UK as a Union, and why. The second is to look at the different constitutional models hypothesised elsewhere in this report and analyse their consequences.

2.1.2 Political, economic and social union

The Calman Commission analysis was that the UK was a political, economic and social union (see also 1.1.3).⁴⁸ A political union reflects the fact of a single state with a single international personality; but it also involves the internal territorial structure of devolution. Economic union acknowledges that the UK is an integrated economy, and broadly speaking an optimal currency area (different parts of the geography respond broadly the same way to economic shocks; if there is an exception, it is London, rather than Scotland). The most obvious aspect of this is a single currency.

⁴⁸ Calman Commission, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, (Edinburgh: Commission on Scottish Devolution, 2009), pp5-6 with further discussion throughout the report. Available: <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/15_06_09_calman.pdf>

Given a single currency, there is no scope for devolving macroeconomic management. Most economic development policy is already devolved. But some aspects of economic policy could in principle be devolved, such as competition policy or employment law or even company law. This might incur strong business and possibly trade union opposition; but in practice business could simply opt into English law, as is already common. Business taxation could also be devolved: corporation tax most obviously, but employers' national insurance contributions also. The price would be some economic inefficiency, and the risk of tax competition. Devolving business taxation so that there are different rates of corporation tax or NICs may provide devolved government with tools to attract industry to their jurisdiction, but it would be at the price of companies making location decisions based on tax rather than underlying economic or business reasons. It also carries the risk of downward tax competition within the UK (as is already seen in international pressures to down rates of corporate income tax) and risks of tax avoidance through corporate recharging (again as is already seen in multinational corporations).

The social union was used in Calman to describe pooling and sharing resources to deliver a comparable welfare state across the UK. No welfare state is truly uniform and under Smith quite substantial divergence will be possible. Not only services like health and education but some individual benefits will be devolved. The remaining sharing of resources for pensions and income support could be broken though: such changes would have to be accompanied by very substantial tax devolution, and the UK would then cease to have any substantial social solidarity.

These aspects of union are interconnected. A main issue which arises is the extent to which further substantial devolution of welfare spending is economically stable: the Governor of the Bank of England has argued that a national authority with spending resources of approximately 25% of GDP was necessary to sustain a stable currency union.⁴⁹ This is a broad-brush assessment, but devolving universal credit or pensions would mean Scotland fell beneath this level. So asymmetric economic shocks which affected the Scottish economy would no longer be cushioned by shared UK resources. In essence Scotland would face the same economic risk as a small Eurozone country, being in a currency but not a fiscal union.

The welfare spending which remains reserved is essentially about the pooling of two sets of risks: economic shocks, and demography. If either were devolved, Scotland would have the responsibilities of an independent country, but not all of the economic flexibility to cope with them. Devolving universal credit, which is cyclical, would require substantial devolved cyclical borrowing powers. Devolving old-age pensions would inevitably mean funding them from domestic Scottish resources. (This is distinct from devolving powers to supplement these benefits, as is proposed under Smith, and very explicitly by the Labour Party). Pooling demographic risk is right in principle as at least some of Scotland's relatively unfavourable demographic profile has been caused by the great ease of emigration to England.

⁴⁹ 'The economics of currency unions', speech by Mark Carney, Governor of the Bank of England, Edinburgh, 29 January 2014. Available: < <http://www.bankofengland.co.uk/publications/Documents/speeches/2014/speech706.pdf>>

Figure 2.2 Gross Value Added, and Public Expenditure per head around the UK in 2013/14

	GVA ⁵⁰				Public expenditure per head ⁵¹	Variation from expenditure average ⁵²
	£ bn	%UK	£ per head	Variation		
England	1,298	86.5%	24,091	103.0	£8,678	97
North East	45	3.0%	17,381	74.3	£9,576	107
North West	142	9.4%	19,937	85.2	£9,276	104
Y'shire/Humber	102	6.8%	19,053	81.4	£8,679	97
East Midlands	89	5.9%	19,317	82.6	£8,219	92
West Midlands	110	7.4%	19,428	83.0	£8,641	97
East England	130	8.7%	21,897	93.6	£7,950	89
London	338	22.6%	40,215	171.9	£9,866	110
South East	227	15.2%	25,843	110.5	£7,756	87
South West	114	7.6%	21,163	90.5	£8,336	93
N Ireland	33	2.2%	17,948	76.7	£10,961	123
Scotland	117	7.8%	21,982	94.0	£10,275	115
Wales	52	3.5%	16,893	72.2	£9,924	111
UK	1500	100%	23,394	100	£8,936	100

2.1.3 Political and constitutional implications of further devolution

The level of devolution envisaged by the Smith commission has put the West Lothian question firmly on the table. Although there is a perfectly good argument that Scottish MPs should vote on the budget (as it determines the Scottish block grant, and so devolved tax and spend) there is a serious challenge to the legitimacy of Scottish MPs voting on purely English tax rates. As the potential for devolution increases, so the problem becomes all the greater. At the extreme end of Devo Max or full fiscal autonomy, Scotland becomes similar to the Channel Islands or the Isle of Man, who are unrepresented at Westminster. (Indeed this was Gladstone's first proposal for Irish Home Rule; among the reasons it fell were that UK interests insisted in reserving some taxation issues to Westminster and so there was a need for Irish representation). There is a principled case to be made for retaining Scottish representation at Westminster, so long as Scotland remains part of the UK and contributes to the UK's defence and foreign policy, and so long as Westminster still legislates for Scotland (see section 2.6.2). But it becomes harder to defend Scotland having parity of representation, if Scottish MPs are reduced to playing a greatly diminished role.

2.1.4 The three potential devolution packages: Devo More

The Smith Commission plans are, broadly speaking, deliverable. Although adopted in haste, with no clear justification of principle, nothing proposed is impossible, or significantly inconsistent with Scotland remaining in the UK. The devolution of all income tax has raised

⁵⁰ Data taken from House of Commons Library, *Regional and local economic growth statistics*, Standard Note 05795, 12 March 2014, p2. Available: <<http://www.parliament.uk/business/publications/research/briefing-papers/SN05795/regional-and-local-economic-growth-statistics>>

⁵¹ Figures are for 2013/14. Taken from House of Commons Library, *Public Expenditures by country and region*, Standard Note/EP/4033, 13 March 2015, p2. Available: <<http://www.parliament.uk/business/publications/research/briefing-papers/SN04033/public-expenditure-by-country-and-region>>

⁵² Ibid.

the West Lothian question and there remain implementation issues in the form of an agreed fiscal framework; but provided these are addressed, this package should be operationally stable.

2.1.5 Devo even more

The main things which might be added would be some movement on economic development powers including business taxation; and perhaps a more explicit acknowledgement that the Scottish Parliament may supplement any welfare benefit out of its own resources. The first of these would be resisted by business, but the Scottish government has a shopping list – which it sees as a down payment on full fiscal autonomy set out in its economic strategy. The list includes responsibility for employers' NICs, and business taxes - corporation tax and capital gains tax. They also seek responsibility for employment rights, including the National Minimum Wage.⁵³

As for welfare, there might be consensus around clarifying the Smith Commission plan to allow a Scottish top-up to welfare payments of all sorts. The SNP again in their economic strategy seek devolution of working age benefits – but with no explanation of how this would be funded – as well as the administration not just of the work programme but of the Jobcentre service. Pensions have not been mentioned by the SNP.

One footnote; there is no principled reason for exempting Research Council funding, though this would be disadvantageous to Scottish universities, so there is no demand for this.

2.1.6 Devo Max

“Full fiscal autonomy” remains the SNP’s stated aim: the assumption is that apart from defence, foreign affairs and macroeconomics, everything would be devolved to Holyrood, including all taxes except value added tax whose proceeds would be assigned. Exceptions might be made for the BBC, and perhaps some other agreed common services (for the sake of illustration, the Meteorological Office). Three main issues arise:

- The fiscal effect in Scotland, even if some phasing in of fiscal autonomy and phasing out of the Barnett formula were agreed. In the most recent Government Expenditure and Revenue Scotland numbers, Scottish spending was £1200 per head higher than the UK average.⁵⁴ Scottish taxation including oil was about £400 per head more, but the oil price is collapsing so that cuts of £7bn or so a year would be needed to balance the books in the next few years. The multiplier effects of such a reduction in public resources on the Scottish economy would be very substantial indeed. The SNP argue this would be offset by the additional growth which use of the new economic levers would create. This is fairyland economics: heroic assumptions have to be made about additional economic growth. If Scotland were to sustain 10%+ higher levels of public services it would need national income of 10%+ per head

⁵³ Scottish Government, *Scotland's Economic Strategy*, March 2015, available: <<http://www.gov.scot/Resource/0047/00472389.pdf>>; SNP 2015 UK General Election manifesto, *Stronger for Scotland*, available: <<http://votesnp.com/docs/manifesto.pdf>>

⁵⁴ Scottish Government, *Government Expenditure and Revenue Scotland 2013-2014*, March 2015. Available: <<http://news.scotland.gov.uk/News/Government-Expenditure-Revenue-Scotland-2013-14-171d.aspx>>

higher than the UK average. Current Gross Value Added (GVA) per head is about 95% of the UK (see Figure 2.2). The SNP are in denial about this, but must surely understand the implications of the arithmetic.

- The fiscal economic effect on the UK. Savings of £7bn a year in fiscal transfers to Scotland would go a long way to balancing the UK's post-budget books. However the lack of fiscal sharing might render the UK single currency less stable. Full fiscal autonomy would mean that the UK remained a currency and banking union but was no longer a fiscal union. During the referendum campaign the UK published persuasive analyses of why currency union without fiscal union was unstable.⁵⁵ Essentially, economic divergence between different parts of the currency union cannot be offset by fiscal transfers between them, and as a result the effective exchange rate for at least one part of the union risks becoming inappropriate for its economy. Greece and the Eurozone make this point very clearly. Similarly a banking union depends ultimately on the capacity of national taxpayers to stand behind the central bank. But there is no obvious mechanism for Scottish taxpayers under full fiscal autonomy to contribute to doing so, and so insure Scottish banks against the effects of another financial crisis.
- The constitutional effect matters much more for the UK. Devo Max as full fiscal autonomy is not a form of devolution but a diluted form of independence. This is discussed further in sections 3.2.4 and 3.2.5.

2.2 Devolution in Wales

2.2.1 Devolution before 2011

Devolution in Wales has lagged behind Scotland in ambition and pace. One material consideration is Wales' poor economy – GVA per head is over 20% below that of Scotland and nearly 30% below the UK average, limiting the native tax base and making Wales dependent on redistribution from the UK (see Figure 2.2).

Popular support for devolution has come slowly. The 1979 referendum went 75% against. In 1997 Wales voted by a whisker for devolution of executive powers, introduced in the Government of Wales Act 1998. The 2006 Act enabled devolution of law-making powers in specified matters, and fuller legislative powers following a referendum. In the 2011 referendum, 63% voted in favour of full legislative powers.⁵⁶

2.2.2 The Silk Commission and the Wales Act 2014

In 2011 the Silk Commission was set up to review devolution of fiscal powers and increased accountability, and the Assembly's powers generally. It had four independent members and members from the four political parties in Wales.

⁵⁵ HM Government, *Scotland Analysis: assessment of a Sterling currency union*, Cm8815, Feb 2014. Available: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279454/CM8815_2901849_SA_Sterling_Union_acc.pdf>

⁵⁶ 'Welsh referendum analysis: Wales "united in clear vote,"' *BBC News*, 4 March 2011. Available: <<http://www.bbc.co.uk/news/uk-wales-12653025>>

Silk 1 In its first report, the Commission proposed that Wales should raise part of its budget by its own devolved tax raising powers.⁵⁷ Business rates, stamp duty land tax, landfill tax, aggregates levy, and (in stages) Air Passenger Duty should be devolved. Wales should also share income tax, as in Scotland, with a rate set 10 pence in the pound below the English rate, the block grant reduced, and the Assembly able to make good the diminution. The Assembly should be able to vary all rates separately. These arrangements should be conditional on:

- (a) inter-governmental agreement on 'fair funding', addressing the complaint of Welsh disadvantage under present arrangements, and
- (b) a positive referendum in Wales.

The Commission envisaged that income tax would thus be partially devolved by 2020. It also recommended that the Welsh Government should be given additional borrowing powers to finance capital investment, and to issue bonds. Almost all recommendations were accepted and enacted in the Wales Act 2014. The Act also made changes to the constitution of the Assembly.

Silk 2 The Commission's second report (March 2014) proposed replacing the 2006 Act's 'conferred powers' with a reserved powers model. Like Scotland, the Assembly would have all powers not expressly reserved to the UK.⁵⁸

It also argued for more vigorous government relations, with better collaboration in health; and in economic matters, including training and skills, and employment. The Commission opposed devolution of social security, seeing this as part of the UK's common 'social union'.

It found no broad consensus for wholesale devolution of justice, but recommended more devolution of its administration, and contemplated the emergence in future of a distinctive Welsh legal system. Meanwhile it proposed devolution of youth justice, policing, prisons and probation. It also recommended that many specific powers be devolved in transport, natural resources, and broadcasting.

2.2.3 St David's Day process

In February 2015 the Government accepted Silk where supported across all four political parties, in particular:⁵⁹

- 'reserved powers', but highlighting work to be done on reservations.
- a presumption that new executive powers should be conferred on Welsh Ministers.

⁵⁷ Silk Commission on Devolution in Wales *Empowerment and Responsibility: Financial Powers to Strengthen Wales* (Silk Commission: Cardiff, 2012), available: <<http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2013/01/English-WEB-main-report1.pdf>>

⁵⁸ Commission on Devolution in Wales *Empowerment and Responsibility: Legislative Powers to Strengthen Wales* (Silk Commission: Cardiff, 2014), available: <<http://webarchive.nationalarchives.gov.uk/20140605075122/http://commissionondevolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>>

⁵⁹ See HM Government, *Powers for a purpose: Towards a lasting devolution settlement for Wales*, Cm 9020, February 2015, available: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408587/47683_CM9020_ENGLISH.pdf>

- the Assembly to determine its size, name, and procedures (by two thirds majority for 'constitutional' matters), and electoral law in Wales.
- the Joint Ministerial Committee to produce a new memorandum and protocols for inter-governmental working.
- Wales to have powers recommended by the Smith Commission for Scotland, including onshore oil and gas exploration.
- Powers on energy, transport, water and natural resources agreed, but with qualifications, for instance asserting the UK role in regulating the electricity market and 'trust ports'.
- Further devolution of Air Passenger Duty, and Welsh universities' access to Research Council money, for further discussion.
- Policing would not be devolved, nor justice, nor powers to set drink driving limits in Wales.

The UK government proposed agreed transfers of tax raising powers – giving control of 10% of tax revenues in Wales - and new borrowing powers. It 'expected' by 2020 a referendum on income tax, to lift to 20% the tax revenues in Wales within the Assembly's control. And it promised a 'floor level' of funding, to be set in the (post May 2015) Spending Review.⁶⁰

This ignored the Silk Commission's first condition for income tax powers, agreement between Governments on 'fair funding'. The Welsh Government condemned the proposals as lacking 'fair funding', pressing an unnecessary referendum on Wales, and failing to match Scotland in powers offered or respect shown.⁶¹ Plaid Cymru similarly condemned them as 'third rate'. Labour criticised them as late, failing on fair funding, and failing on parity with Scotland.⁶² The Liberal Democrats offered additional devolution in transport, and of policing.⁶³

2.2.4 Future devolution in Wales

The St David's Day announcements were hoped to put Welsh devolution on a new sustainable basis, with cross party support. They have hardly done so.

On reserved powers, negotiations are likely to stretch well into 2016, implying enactment in 2017, at best. Left aside is whether Wales should have its own jurisdiction, interpreting through its own courts an increasing field of Welsh made law. This was strongly advocated by First Minister Carwyn Jones.⁶⁴ The idea has caused alarm, notably to Home Secretary Theresa May. Her opposition may assume that criminal justice would have to be devolved too; but this does not necessarily follow. (Canada, for example, has a different legal

⁶⁰ 'Welsh devolution: more powers for Wales'. UK government press notice, 27 February 2015,

<https://www.gov.uk/government/news/welsh-devolution-more-powers-for-wales>.

⁶¹ 'Carwyn Jones, "I make no apologies for wanting a fair deal for Wales"', WalesOnline, 21 June 2012. Available: <<http://www.walesonline.co.uk/news/wales-news/carwyn-jones-i-make-no-2053366>>

⁶² Steven Morris, 'New powers for Wales dismissed as third-rate devolution', *The Guardian*, 27 February 2015. Available: <<http://www.theguardian.com/politics/2015/feb/27/powers-wales-devolution-st-davids-day-agreement-plaid-cymru>>

⁶³ David Deans, 'Liberal Democrats Kirsty Williams says St David's Day announcement on further devolution won't settle Wales' constitution as speculation mounts', *WalesOnline*, 25 February 2015. Available:

<<http://www.walesonline.co.uk/news/wales-news/liberal-democrats-kirsty-williams-says-8716459>>

⁶⁴ 'Welsh Government takes first steps to Wales' own legal jurisdiction' *Wales Online*, 27 March 2012. Available: <<http://www.walesonline.co.uk/news/wales-news/welsh-government-takes-first-steps-2046018>>

jurisdiction in each province, but one body of criminal law which is an exclusively federal jurisdiction).

It would be technically possible to have either unified or separate jurisdictions, for devolved or devolved and overlapping England and Wales (or UK) law. But adopting the reserved powers model would make it difficult not to create a separate jurisdiction at some point, to minimise 'forum shopping' and potentially competing judicial decisions. Unravelling these complexities will take time.

Finance will cause continuing contention. The Barnett formula serves the need to set figures quickly amid the tussles of a spending review. It cannot respond to different 'need' between countries, and imports UK government views how far services should be publicly financed. The Holtham Commission argued powerfully to replace Barnett with needs based formulae.⁶⁵ It advocated six indicators, three demographic, two of deprivation, one of cost of provision; all supportable by consistent, reliable and periodically updated data for the whole UK. On this basis Holtham argued that Wales suffered a shortfall of over £400m a year. An updated figure is still over £300m a year. (On a similar basis Scotland would receive less than now). No Chancellor is likely to offer fair funding unless Wales has extraordinary leverage post May 2015.

The 'expectation' of a referendum on income tax by 2020 looks ill founded. Welsh Ministerial statements do not suggest that Wales expects to 'stand on its own feet' financially. There is no political mood comparable with Scottish Nationalist opinion urging early severance from the UK. Plaid Cymru's aspirations find expression in gradualism.

'Reserved powers' should reduce potential ambiguities over who has authority, but will not markedly reduce overlaps between UK and Welsh Government activities. Economic, social and geographical entanglement militates against a 'clean break'. The only way to manage overlapping functions is better intergovernmental co-operation.

More devolution will raise the issue of how many MPs Wales should have. The aborted Parliamentary Boundary Review would have cut Wales from 40 to 30 MPs out of 600.⁶⁶ Wales is about a third over-represented. Scotland's over representation was reduced in the Scotland Act 1998; Wales must expect to follow suit.

2.3 Northern Ireland, not yet responsible government

2.3.1 Flaws in the system

The Agreements that brought parties of the extremes together in a multiparty government have produced deadlock. Carve up between the two sides has been the default rather than power sharing, in a system that has been described as "benign apartheid". The source of deadlock seems to lie in the system itself. Assembly voting in communal blocs which are designated as "unionist", "nationalist" and "other" has entrenched sectarian politics and

⁶⁵ Independent Commission on Funding and Finance for Wales, *Fairness accountability: new funding settlement for Wales, final report*. July 2010. Available: <<http://gov.wales/docs/icffw/report/100705fundingsettlementsumen.pdf>>

⁶⁶ House of Commons Library, *Constituency boundaries: the sixth general review in Wales*, standard note 06226, 4 February 2013. Available: <www.parliament.uk/briefing-papers/SN06226.pdf>

hampered the cross community cooperation needed to develop greater integration. The DUP and the Alliance party now support replacement of the designations with a voluntary coalition, but the nationalists who are still in a minority, remain opposed. In the Executive, all must have prizes and individual ministers begin by favouring their own. They can belong in government and behave like an opposition at the same time. Collective responsibility is very weak and the blocking mechanism in the Assembly is strong.

2.3.2 Budget stand-off

Since autumn 2014, financial rather than “peace” issues have brought the Assembly to its greatest stand-off since the suspension of 2002. For some time, the British government has wanted to reduce the premium paid to compensate for the cost of the Troubles and to include Northern Ireland in its ambition to “rebalance the economy.” This means Northern Ireland starting to bear a bigger share of UK- wide cuts.

Northern Ireland is one of the poorest regions in the UK (see Figure 2.2). GVA still languishes 13% below its pre-recession peak. But thanks to the high level of public sector employment, total unemployment of 8% has been about half that of the Republic. A UK government priority has been to reduce the size of the public sector, at 28% of employment the largest by far in the UK, compared with England’s 17.4%.⁶⁷ Although the block grant has been cut in real terms by about 7% since 2010, the full impact of austerity has not fully caught up - until now. This has brought government strategy into conflict with Sinn Fein in particular.

Sinn Fein refused to pass a balanced budget without a short-term Treasury loan. Then came a fresh crisis over welfare, legally devolved since the days of the Stormont parliament. Parity of social security benefits with GB has always applied, but it is wholly dependent on Treasury funding outside the allocations of the Barnett formula. Sinn Fein refused to pass the Welfare Bill and in reply the Treasury imposed “fines” in the form of future block grant deductions of £100m a year for two years.

2.3.4 Breakthrough at Stormont House

The Stormont House Agreement reached just before Christmas 2014 was thought to have ended the impasse.⁶⁸ Through British and Irish mediation with the US administration in support, a new £2 billion package over 5 years alongside the long-awaited devolution of corporation tax was agreed. This was on condition that the budget was passed and a revised deal for welfare was accepted, but still involving cuts.

Institutional reform was to be unblocked. Assembly membership was to be reduced from 108 to 90 seats, and ministerial departments from 11 to 9. Provision was to be made for an opposition with effective speaking rights. To begin reducing the size of the public sector, 3000 civil servants were to be offered voluntary redundancy. The funding was made up of up to £650m of new and additional funding; flexibilities to free up £900m of resource spending

⁶⁷ Office for National Statistics, *Statistical Bulletin: Public sector employment Q4 2013*, March 2014. Available: <http://www.ons.gov.uk/ons/dcp171778_351147.pdf>

⁶⁸ HM Government, *The Stormont House Agreement*, 23 December 2014. Available: <<https://www.gov.uk/government/publications/the-stormont-house-agreement>>

(normally ring fenced for capital); and additional capital borrowing of up to £350m. Implementation of the deal was to be supervised by the Treasury. This was hardly surprising, given the size of the £10bn a year deficit.

2.3.4 Last minute hitch

But at the last moment before the Welfare Bill was due to pass, Sinn Fein went back on the deal claiming a shortfall for supplementary benefits of £200m.⁶⁹ They had baulked at the contrast between appearing as a party of austerity in the North while riding high in the polls as anti-austerity champions in the Republic. The whole package therefore came under threat. The Stormont House Agreement makes the devolution of corporation tax from April 2017 conditional on the Assembly passing a balanced budget and the Welfare Bill. This may not be quite the threat it seems. While the Executive are formally committed to taking on CT powers, doubts remain as to whether the estimate of new jobs created as a result of a lower CT rate sufficiently compensates for the consequent cut of at least £300 million from the block grant.

2.3.5 Stormont suspension threat

This saga casts doubt on any idea that Northern Ireland ministers can handle the devolution of small taxes like landfill and an aggregates levy. They refuse even to put up the rates and introduce water charges for fear that one side will denounce the other. While the threat of Assembly suspension loomed a little larger, it still seemed unlikely.

2.3.6 Future of devolution in Northern Ireland

The Northern Ireland Executive will be reluctant to take on fresh devolution, such as the minor taxes mentioned above, even if the Stormont House Agreement is fully implemented. Assimilating the impact of corporation tax would be quite enough, if it does happen, and the snail's pace of reform saps energy. The tax base is too small and dependence on the Treasury is too great. It will take years of "rebalancing the economy" before attitudes change. It has taken thirteen years of wrangling over boundaries to reach agreement on reducing the number of councils from 26 to 11, and to amalgamate four education boards into one from early 2015. These reforms finally came about because of the slow recognition that Northern Ireland was expensively over-represented politically, as well as over-governed.

Northern Ireland governance is about more than UK devolution (Strand One of the Belfast Agreement). It is also about the equally slow development of North-South relations on the island (Strand Two) and the more dynamic Strand Three, the British-Irish relationship which although international has quite a domestic feel to it. Sectarian competition remains the main preoccupation of politics. The best that can be said is that breakdown has been avoided, and that progress of a kind has been made by the new emphasis on the "bread and butter issues" of Stormont House.

⁶⁹ 'Sinn Fein urged to fulfill pledge' *Belfast Telegraph*, 11 March 2015. Available: <<http://www.belfasttelegraph.co.uk/news/northern-ireland/sinn-fein-urged-to-fulfil-pledge-31059034.html>>

2.4 Devolution within England

English local government is a patchwork of 352 authorities of widely differing shapes, sizes, and functions, serving very different localities and populations. This reflects varying economic, social, geographical, and historical factors. There has been no attempt to set a consistent structure since the Local Government Act 1972, with its creations proving so unpopular they were undone from the 1990s. The last Government encouraged proposals for unitary councils, but with limited success. The 2010 Government blocked moves to create new unitary authorities, arguing councils should find other ways to meet demands for public services within reducing budgets.⁷⁰

2.4.1 Local government scope and structure

Local authorities have responsibility for education, social care, transport, housing, the environment, planning and development, protective services, cultural, registration and electoral services and local tax collection. In six conurbations, metropolitan boroughs run most services, save for some run by single purpose bodies. Elsewhere counties and districts divide responsibilities between them. There are 55 unitary authorities.

Since 1965 London has had 32 boroughs, plus the City. In 1965 the Greater London Council was created to handle strategic issues. It was abolished in 1986, the boroughs becoming unitary authorities and overarching responsibilities going to joint boards. From 2000, after a referendum, the Greater London Authority Act 1999 established a Mayor and Assembly. The Authority had direct powers over policing, transport, fire and emergency services, and certain London public bodies, but the boroughs retained most local government functions and powers. However, the Mayor has rights and duties to frame strategies, has been given powers over housing, regeneration and development, and with the GLA's general power of competence has direct or indirect say over transport, economic development, skills, housing, environment, police, fire, and culture.⁷¹

2.4.2 Powers and accountabilities: 'localism'

To demonstrate the coalition Government's belief in 'localism', the Localism Act 2011 gave local authorities new powers and responsibilities. It included:

- A 'general power of competence', enabling councils to do anything an individual could (including imposing charges, but not taxes).
- Abolishing the Standards Board regime, and relaxing governance requirements.
- Freedom to offer business rate discounts to attract firms.
- Directly elected mayors – enabling the Government to require or councils to request a local referendum to create the office.

⁷⁰ See DCLG announcement of 26 May 2010, and the subsequent Local Government Act 2010, introduced urgently for this single purpose.

⁷¹ See Tony Travers, *The Politics of London: Governing and ungovernable city* (Palgrave Macmillan 2004)

- New housing and regeneration powers for the Mayor in London.
- Enabling Ministers by order to transfer powers from central government or public bodies to local authorities (as requested by the Core Cities group).

And for 'communities' (as distinct from councils):

- A 'right to challenge' to take over local authority services.
- A 'right to bid' for local groups to bid for community assets a council is selling.
- A right to veto, by referendum, proposed council tax increases above a threshold set each year by the Secretary of State.

The Government has thus argued for and established a regime

- Giving councils greater powers to run things as they wish, with the prospect of gaining further powers from Government or other public bodies
- Within a framework set by UK Government, and Ministerial powers to control finance
- Subject to rights of groups to challenge how services are supplied
- While asserting that local leadership is best supplied by directly elected mayors.

2.4.3 Finance

Local authority expenditure is approximately £150 billion in 2014-15, nearly a quarter of Government's 'totally managed expenditure'. It has been reduced from over £170 billion in 2010-11, and on current plans will fall further, from about 4% of GDP five years ago, to 3% now, to less than 2.5% in five years' time. In successive spending reviews the Government will have reduced core grant funding by 40% from April 2011 to April 2016.⁷²

65% of local government income comes from UK government grants, with council tax, sales, fees, charges and rents making up the rest. About £40 billion a year goes on education; £25bn on housing; £20bn on social care; with transport and policing getting £10bn each.⁷³

One long run challenge to councils' revenue, and reason for dependence on UK government, is the declining value of local property tax, because there has been no general revaluation of properties in over 20 years, and the 8-band structure caps income from this source.

The major expenditure challenge is social care, which is set to rise to take up the major part of councils' funding, at the expense of other responsibilities. The crisis in adult social care has been mitigated by the Government's creation of the £3 billion Better Care Fund, straddling central NHS and local social service provision. If well directed, this should spare the NHS much bigger liabilities, as well as providing services better suited to recipients' needs. But reduced demands on the NHS do not translate into reduced costs, if facilities remain and capacity is released to other patients. In contrast to social care, successive governments have pledged increased NHS spending; and most NHS treatment is publicly financed, while means tested social care is tightly restricted. These factors hugely

⁷² See '*Financing English Devolution*', the Report of the 'Independent Commission on Local Government Finance' set up in 2014 by the Local Government Association and the Chartered Institute of Public Finance and Accountancy

⁷³ Derived from *Local Government Financial Statistics, England: No24, 2014*, presented to Parliament by the Secretary of State for Communities and Local Government in June 2014

complicate more flexible budgeting between the two.

2.4.4 Individual authorities' viability

An NAO Report in November 2014, reflecting earlier work by CIPFA and others, found that councils had coped well with the financial squeeze.⁷⁴ But many were judged to have had difficulties delivering their 2013-14 budgets, and even more to face difficulties delivering their medium term financial plans with over 50% likely to face difficulties from 2015 to 2020.

2.4.5 Devolution proposals

Against this background, many proposals have come forward for greater 'devolution' in England. None come close to that granted to Scotland, Wales and Northern Ireland. Instead they envisage giving councils or groups of councils powers to integrate the delivery and financing of services, to enable greater economy; and greater ability to build the local economy, generating higher local value and potentially higher tax revenue.

The Communities and Local Government Select Committee's Report in July 2014 drew comparisons with devolution to Scotland, Wales and Northern Ireland in terms of the local economy.⁷⁵ Greater Manchester and Greater Birmingham had higher GVA than Wales, and London had higher GVA than those three countries put together (see Figure 2.2). They found evidence of 'at least an indirect connection between fiscal devolution and growth', implying that 'fiscal devolution - as part of a package of wider decentralisation - would encourage greater economic growth across England'.

The Committee discussed balancing equalisation across authorities with incentives, the risks of fluctuations in devolved revenues, and of distortions caused by windfall gains. There should be a baseline assessment of authorities every 10 years, from 2020, to assess the benefits of fiscal devolution, and to set support from central Government accordingly. It recommended a general revaluation of property for council tax. London and combined councils should have power to vary council tax bands and to introduce new bands at the top of the scale. Elected mayors should only be introduced following local referendums.

2.4.6 London

One recurrent issue is the status of London. In its extended region it accounts for 22.6% of the UK's population and GVA (see Figure 2.2). It is home to the UK and England's main centres of political, financial and cultural power. It is a world city with strong international links, and has a more widely diverse population than anywhere else in England or the UK, with a big proportion born outside the UK. It is hard to imagine that it would ever vote to leave the EU. It has repeatedly been urged that London deserves to enjoy the highest level

⁷⁴ National Audit Office, *The impact of funding reductions on local councils*, November 2014. Available: <<http://www.nao.org.uk/wp-content/uploads/2014/11/Impact-of-funding-reductions-on-local-authorities.pdf>>

⁷⁵ House of Commons Communities and Local Government committee, *Devolution in England – the case for local government*. HC503, June 2014. Available: <<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcomloc/503/503.pdf>>

of fiscal and political autonomy granted to any other part of the UK.⁷⁶ But if London retained too much own revenue, it would put at risk the redistribution of funds away from London, which underpins the UK's social union.

2.4.7 Fiscal devolution granted or in train

The Government has been energetic in agreeing a variety of reformed financing arrangements. In 2010 it abolished the Regional Development Agencies, which had administered central Government and EU funds, in favour of Local Enterprise Partnerships. There are 39 LEPs set up on a voluntary basis by local initiative of businesses and councils, sometimes cutting across local government areas. Following Michael Heseltine's report in 2012 on stimulating growth through revitalised local enterprise, UK government delegated a £1.4bn Local Growth Fund to them in 2014. Additionally, it has agreed to delegate to LEPs nearly £12bn from Departmental spending under Growth Deals.⁷⁷

Alongside it has enabled potential retention of business rates, and struck a series of City Deals, initially with 8 major cities outside London, then another 18, covering about 70% of England's population.⁷⁸ A range of New Development Deals has created opportunities to put together financing for local infrastructure, new programmes to improve skills and employment, business start-up, broadband, 'green' measures, and transport. Government Departments have been readier to work in partnership with local bodies in delivering their own programmes – notably DWP in improving employment and skills.

The most ambitious moves have been in the northern cities. In 2014 a formal agreement was made between Greater Manchester Combined Authority and HM Treasury for transition to a directly elected Mayor who would control newly devolved budgets and powers⁷⁹:

- a devolved and consolidated transport budget, with a multi-year settlement
- franchised bus services, integrating smart ticketing, and possibly rail stations
- strategic planning, including a statutory spatial framework
- a new £300 million Housing Investment Fund and a reformed earn back deal
- taking on the role of the Police and Crime Commissioner.

The Authority would gain control over:

- devolved business support budgets
- apprenticeship grants and further education provision

⁷⁶ Tim Oliver, 'A devolved government for London would be a big step towards rebalancing power in the UK', *LSE British Politics and Policy Blog*, 20 September 2014. Available: <<http://blogs.lse.ac.uk/politicsandpolicy/a-devolved-government-for-london-would-be-a-big-step-towards-rebalancing-power-in-the-uk/>>

⁷⁷ Michael Heseltine, *No Stone Unturned*, October 2012. Available: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34648/12-1213-no-stone-untuned-in-pursuit-of-growth.pdf>

⁷⁸ Patrick Wintour, "'City Deals' offer eight British cities greater control over spending', *The Guardian*, 5 July 2012. Available: <<http://www.theguardian.com/society/2012/jul/05/city-deals-eight-cities-greater-control>>

⁷⁹ HM Treasury and Greater Manchester Combined Authority, *Greater Manchester Agreement: devolution to the GMCA and transition to a directly elected mayor*, 3 November 2014. Available: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/369858/Greater_Manchester_Agreement_i.pdf>

- an expanded Working Well pilot, with central government funding on payment by results, and risk sharing
- joint commissioning with DWP of the next phase of the Work Programme
- developing a business plan for integrating health and social care.

The Government offered Sheffield city region a more limited agreement, local leaders there not having agreed to establish a directly elected Mayor.⁸⁰ The city region would gain an adult skills budget, money for a tram-train pilot, some devolved business support funding, smart ticketing, and a say in commissioning of the Work Programme, and over Government decisions on disposal or use of assets and land.

George Osborne's 2015 Budget restated the call for a 'Northern powerhouse', a joining up of local enterprise in a coordinated economic area across the Pennines and from coast to coast.

A potentially far-reaching proposal was announced in February 2015, to devolve £6bn of health spending to Greater Manchester from 2016, to manage in concert with its social care responsibilities.⁸¹ This is well in line with expert opinion about how policies and services should be better aligned, but was a startling move forward. The proposal will need a great deal of work in the next 12 months to be realised. Not least it will entail the reformulation of the structures through which health and social care are governed, harmonisation of service provision and contracting; and taking account of the differing public and private financing of health and social care. National NHS guidance and statute will continue to apply, but it remains to be seen what degree of variation in provision and standards may be countenanced. Boris Johnson was quick to claim similar powers in London.

2.4.8 Future decentralisation in England

The plethora of individually tailored arrangements launched in the last 5 years goes far beyond previous initiatives. Continuation will produce highly variegated solutions. Arrangements which look chaotic can be made to work by good sense and goodwill. But the backdrop of ever shrinking resources does not make it easy.

While local or regional growth is not a zero sum game, there is bound to be competition between regions in attracting private investment or new streams of government funding. Meanwhile mismatches between schemes and bodies having a role in different aspects of public service and policy are also bound to throw up problems. At some point some harmonisation of the framework may be needed.

The coalition Government's key to enhanced accountability is elected mayors. The idea is often unpopular with councillors. More importantly, it has proved unpopular with electors; in 12 referendums held in 2012 only Bristol voted to establish an elected mayor, Doncaster voted to keep the elected mayor it already had, and 10 cities voted against.

⁸⁰ 'Autumn statement 2014: George Osborne to give more powers to Leeds and Sheffield', FT, 26 November 2014. Available: <<http://www.ft.com/cms/s/0/640594b4-7588-11e4-b082-00144feabdc0.html#axzz3XyySwEbL>>

One immediate issue is going to be how the place of new financial deals with city regions can be handled in the 2015 Spending Review. The NAO and PAC, echoing outside criticism, have expressed concern that Government, through the Department of Communities and Local Government, has too little understanding of the implications of budget choices by local authorities, relying heavily on councils' statutory duties and not troubling too much about the impacts of the substantive choices which have to be made. The Treasury generally prefers to deal with bigger aggregates of function and resource, because it is more straightforward and, crucially, risk can be handed over too, managed across a bigger pool. But this may carry political risk, particularly when so many new initiatives are still at the stage of development, if not experiment.

2.5 Westminster: English votes for English Laws

There is clearly a strong case for Parliament to address the question of EVEL - English votes for English laws. But the chances of identifying a solution which is widely supported across the political spectrum seem remote. The interests of the two main parties are in direct conflict. It has proved difficult to craft simple solutions. And people fear the long term consequences, with some predicting that EVEL would lead to a separate English government or parliament.

2.5.1 The conflicting interests of Labour and the Conservatives

EVEL mixes issues of both principle and political arithmetic. The *principle* involved is that it is illogical for issues which relate solely to England - or solely to England and Wales⁸² - to be decided by all 650 MPs. If issues such as education and health are devolved to the Scottish Parliament and Northern Ireland assembly, it seems wrong that Scottish and Northern Irish MPs should continue to have a vote on such issues in England and Wales when they do not affect the lives of their constituents.⁸³ Arrangements are needed, so the argument goes, for English matters to be determined by English MPs alone. The *political arithmetic* arises from the possibility of a Labour-led Government with a working majority in the House of Commons but not a majority of English MPs. (This could happen in 2015.) In contrast, it seems implausible for there to be a Conservative-led Government which had a majority of MPs at Westminster without having a majority of English MPs.

There is thus a divergence of interest between the two main political parties. The incentive for the Conservatives to find a way forward on the issue is far stronger than for Labour. Any arrangements embracing EVEL may very well hinder a future Labour led Government. But it is highly unlikely to constrain a Conservative-led one.

⁸² Throughout this chapter, the discussion is very largely in terms of England, for simplicity. In practice, there are a wide number of areas where the relevant unit is "England and Wales" rather than England in isolation.

⁸³ As such EVEL is simply a restatement of the "West Lothian" question, but in language which is more resonant of the underlying issue.

2.5.2 The technical difficulties of introducing EVEL

There are several technical difficulties. What counts as an English law? Who will decide which laws are English? What separate procedures should be introduced for English laws? And can those procedures be entrenched? The questions need to be addressed in turn.

What counts as an English law? Who would decide which laws are English?

The McKay Commission argued the test should be based primarily on the practical application of a law, not its technical extent.⁸⁴ The test should be, laws having ‘a separate and distinct effect in England (or England and Wales)’. In such cases the whole House should make a decision only after knowing what English opinion is. The Speaker would decide, on advice, just as he now decides on money bills. So long as the new procedures were not enshrined in statute, his rulings could not be challenged in the courts. In giving his rulings, the Speaker would in effect be deciding, what should count as an English division? This could apply to voting on tax changes as well as legislation.

What separate procedures should there be in the Commons for English laws?

The McKay Commission offered a menu, rather than a specific new process. They proposed a Legislative Consent Motion before Second Reading, analogous to the Sewel motions in the devolved legislatures, to test English opinion on the principle of a new law; and then English only MPs for the Committee stage. But on Report or Third Reading the whole House would be able to overrule English opinion. It would be transparent that this had been done, and the government might pay a political and electoral price.

The coalition government’s White Paper in December 2014 highlighted the difficulties in agreeing a new procedure.⁸⁵ The Cabinet Committee chaired by William Hague came up with three Conservative options and a separate Liberal Democrat option. In subsequent discussions the Conservative party still could not agree, so instead of putting the matter to a vote in the Commons, on 3 February Hague simply announced what would be Conservative policy in their manifesto.⁸⁶ After a Committee stage involving only English MPs, English laws would require a Legislative Consent Motion from all English MPs. This would amount to an English veto: English parts of a bill could not proceed without an English LCM. But at Third Reading MPs from all parts of the UK would be entitled to vote. This would amount to a second, all UK veto – legislation amended by English MPs but not supported by a majority of all 650 MPs would not become law.

How should these procedures be introduced? Can they be entrenched?

Parliamentary officials advise this should be done by Resolution, defining the principle to be followed, accompanied by Standing Orders. It should not be done by legislation, because that could lead to the courts getting involved. There would be nothing to prevent a future government or Parliament from reversing the Resolution or Standing Orders. But even if the

⁸⁴ McKay Commission, *The Consequences of Devolution for the House of Commons*, March 2013. Available: <www.parliament.uk/briefing-papers/sn06821.pdf>

⁸⁵ HM Government, *The Implications of Devolution for England*, Cm 8969, December 2014. Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387598/implications_of_devolution_for_england_accessible.pdf. Conservative Party Manifesto 2015, *Strong leadership, a clear economic plan, brighter, more secure future*, p70.

⁸⁶ ‘English MPs would get tax veto under Conservative plans,’ *BBC News*, 3 February 2015. Available: <<http://www.bbc.co.uk/news/uk-politics-31099106>>

new procedures were introduced by statute, there is nothing to prevent a future government from seeking to repeal or amend the statute.

2.5.3 The political consequences of EVEL

In opposition to EVEL, it is claimed that it would create two classes of MP, with different voting rights; that over time it would lead to the creation of an English parliament within the Westminster Parliament; and that it would require an English government within the UK Cabinet.⁸⁷ In reply, proponents say that there are already more than two classes of MP. It would not require an English government, or parliament; nor would it prevent non English MPs from holding senior positions in the government.

It is difficult to adjudicate between these competing claims, because it all depends on how EVEL played out politically. That would depend critically on whether Conservative MPs wanted to make mischief, using EVEL to harry a Labour government; and whether a Labour government abided by the spirit of the new rules, or sought to avoid or minimise scrutiny by English MPs by gaming the new system.

It is also difficult to judge how much difference EVEL would make in practice. Applied retrospectively, EVEL would not have made much difference, for two reasons. First, there are relatively few English laws, in the sense of whole Bills that are English. In the 2014-15 session there were just two.⁸⁸ The second reason is that, had EVEL been in force in the past, very few votes would have had a different outcome. A crude analysis suggests that only 21 out of nearly 5,000 divisions in the House of Commons since 1997 would have produced a different result if the votes of Scottish MPs had been excluded.⁸⁹ The most controversial issues were the introduction of foundation hospitals in 2003 (when 61 Labour MPs rebelled), and the raising of student tuition fees to £3000 in 2004.

But the past is not necessarily a guide to the future, in two respects. This analysis covers a period when the Blair governments enjoyed a comfortable majority in England as well as across the UK, and did not need the votes of Scottish MPs. If we have more hung Parliaments in future, we may see more governments which depend upon Scottish or Welsh or Northern Ireland MPs to get their legislation through. The second respect in which EVEL may be more important in future is that, with further devolution, more legislation at Westminster may apply wholly or mainly to England: the proportion of 'English laws' may increase.

Whether EVEL proves to be a major roadblock to a future Labour government, or just another factor in the legislative process, depends also on wider changes in Westminster and Whitehall culture. What it would require is more compromise over some government bills, more bargaining with the other parties to get legislation through. That represents a big change for the major parties at Westminster, with its strongly majoritarian culture where the

⁸⁷ See Vernon Bogdanor, 'Why English votes for English laws is a kneejerk absurdity', *The Guardian*, 24 September 2014. Available: <<http://www.theguardian.com/commentisfree/2014/sep/24/english-votes-english-laws-absurdity-separatist>>

⁸⁸ The Social Action, Responsibility and Heroism Bill, and the Modern Slavery Bill. The first made a very minor change to the English law of negligence, the second strengthened the criminal law on human trafficking.

⁸⁹ Richard Taylor and Anna Powell-Smith, 'Parliament without Scottish MPs: how would it have looked since 1997' MySociety blog post, 10 September 2014. Available: <<https://www.mysociety.org/2014/09/10/parliament-without-scottish-mps-how-would-it-have-looked-different-since-1997/>> .

government almost always gets its bill. A government with a minority of English MPs would need to adjust its majoritarian mindset (see 3.3.8). It could learn from the experience in Scotland, where the SNP minority government managed to pass plenty of legislation from 2007 to 2011 by seeking cross-party support. Or it could look to continental Europe, where for most governments it is the everyday reality, part of the ordinary business of parliamentary government in countries like Denmark or Germany.

2.5.4 Practical considerations – can EVEL be delivered?

A final conundrum is to work out when and how EVEL might be introduced. The next government is likely to be Conservative or Labour-led (see Part 3.1 for the full range of options). The Conservatives have given up trying to develop a cross-party consensus on EVEL, and even given up trying to reach agreement within their own party. The 2015 manifesto contains a strong commitment to introduce EVEL, in part in the hope of attracting votes in England and preventing UKIP portraying itself as the voice of English nationalism.⁹⁰ But if the Conservatives form the next government, will they go to the trouble of trying to introduce EVEL? If in a minority or in coalition, they may be blocked by the other parties in Parliament or their coalition partners.⁹¹ They also risk re-opening the divisions within their own party, who will not see the immediate need for EVEL when the Conservatives have a majority in England anyway. So it may be quietly dropped, or left to languish by referring all the different options to the Procedure Committee.

A Labour led government will have even less incentive to introduce EVEL. Labour's proposal is to refer these issues to a constitutional convention (see section 1.6).⁹² If the convention reports in favour of EVEL, Labour would feel obliged to allow a debate in the Commons, but might not want to go further. EVEL would make life harder for Labour governments, and introducing it could expose splits within their own ranks. Again, they could use delaying tactics like the Procedure Committee; or announce some limited experiments to test the different options.

A third possibility is EVEL being introduced by informal convention, if the parties in Scotland, Wales and Northern Ireland increasingly abstained from voting on English only matters. This has been the policy of the SNP; but recently they modified their approach, arguing that Scottish interests are at stake in English legislation and English taxation because of the financial consequences.⁹³ Moreover, in a period of coalitions or minority governments, smaller parties will seek to maximise their leverage – and giving up the vote is not the way to maximise that leverage. Even the Liberal Democrats while being sympathetic to the need for “something to be done” on EVEL are using the issue to campaign for English votes in

⁹⁰ Conservative Party Manifesto 2015, *Strong leadership, a clear economic plan, brighter, more secure future*, p70.

⁹¹ The DUP's Deputy Leader Nigel Dodds has strongly criticised the Conservative plans for EVEL, see <http://www.theguardian.com/politics/2015/apr/26/conservative-party-is-losing-our-support-over-scotland-warns-dup>.

⁹² Labour Party Manifesto 2015, p 64: 'It is also time to consider how English MPs can have a greater role in the scrutiny of legislation that only affects England. This includes the option put forward by Sir William McKay, of a committee stage made up of English-only MPs. These ideas must now be considered as part of the Constitutional Convention process'.

⁹³ Mure Dickie, 'Nicola Sturgeon says SNP will vote on English laws', FT, 22 January 2015. Available: <<http://www.ft.com/cms/s/0/4ccb187e-a1a1-11e4-b176-00144feab7de.html#axzz3XyySwEbL>>

Parliament to be proportionate to votes cast in the election, not seats won.⁹⁴ EVEL could well become a further example of the problems inherent in House of Lords reform - namely that everyone agrees that “something must be done” but there is no consensus of what should be done.

2.6 Whitehall and Westminster: Implications of devolution and federalism

2.6.1 Whitehall

Government Departments in Whitehall pride themselves on their adaptability and ability to respond to changing political circumstances. One White Paper on the future of the civil service encapsulated this by using the title “Continuity and Change”, emphasising that evolution not revolution will always be the preferred Whitehall approach.

Over the last forty years, Whitehall has demonstrated this ability to evolve, not least in its relationship with the EU. This affects large areas of Government activity, but has had no overtly dramatic effect on the way in which the Government operates through the Cabinet and the various Government Departments.

Similarly, Whitehall has reacted calmly – critics would say, too conservatively - to the devolution that has taken place in Scotland, Wales and Northern Ireland. The three “territorial” Departments - the Scotland, Wales and Northern Ireland Offices – have reduced their functions but all survive, retaining their Secretaries of State with a place in the Cabinet. The Joint Ministerial Committee (JMC) was established to provide a forum for Ministers from Whitehall to meet the three devolved governments; and this is backed by continued discussions between officials. The JMC has been widely criticised as being ineffective, in particular in its grander formats; but the machinery is there.⁹⁵

In short, the UK Government has adapted its processes relatively smoothly so far in response to almost two decades of devolution and constitutional change. The issue, however, is whether future changes can be accommodated quite so smoothly.

There are five challenges of the future:

- An increasingly assertive Scottish Government determined on increasing economic powers and more inclined to challenge UK Government policy
- An In/Out referendum on the EU, and replacement of the Human Rights Act
- The implications of increased decentralisation in England
- The introduction of English votes for English laws

⁹⁴ Nicholas Watt and Rowena Mason, ‘Lib Dems call for more proportional parliamentary voting on English laws’, *The Guardian*, 2 October 2014. Available: <<http://www.theguardian.com/politics/2014/oct/02/parliamentary-bills-proportional-english-laws>>

⁹⁵ The JMC Plenary meetings, and JMC (Domestic) are the most ineffective. See Akash Paun and Robyn Munro, *Governing in an Ever Looser Union*, Institute for Government, February 2015, available: <<http://www.instituteforgovernment.org.uk/sites/default/files/publications/Governing%20in%20an%20ever%20looser%20union%20-%20final.pdf>>; and House of Lords Constitution Committee, *Intergovernmental Relations in the UK*, HL 146, March 2015, available: <<http://www.publications.parliament.uk/pa/ld201415/ldselect/ldconst/146/146.pdf>>

- The impact of further austerity.

The Challenges from Scotland

The economic challenge from Scotland is real, but obscured by manoeuvring over tax raising powers. All parties agree that Scotland should raise more of its money through its own taxation of its citizens and less from UK taxation - thus strengthening the fiscal accountability of the Scottish government to its voters. The principle of that argument (now also proposed for Wales) is understandable, but in the long term the link (through the Treasury) between taxation and economic management seems likely to be weakened. The Treasury will need to yield control over certain fiscal aggregates for fiscal devolution to work; but there is a risk to the economic union if different parts of the UK, though united by a single currency, can adopt different macro-economic models.

The more general challenge from Scotland is best illustrated by the debate over the replacement for Trident. Defence is an issue which the UK Government has no intention of devolving but the SNP is determined that no nuclear missiles will be located on Scottish soil or in Scottish water. In due course, the UK Government will need to decide whether it can impose the replacement for Trident on a Scotland which may well have a majority of MPs who campaigned on an anti-Trident platform in the 2015 election. Staunch Unionists will argue that the 2014 referendum vote on independence gives a clear mandate for the UK Government asserting its will in these circumstances. Others - equally staunch - will consider that such assertiveness will merely accelerate demands for a second referendum and lead to independence.

In/Out Referendum on the EU

An In/Out referendum on the EU would present multiple challenges. It would overshadow all other business in the next Parliament. It would test the loyalty of the FCO, whose officials are predominantly Europhile. (Their support for Europe is evidence-based: the balance of competences review has shown strong net benefits of EU membership).⁹⁶ It would be a huge diversion of time, energy and political capital, which could split the governing party. It would further deplete the shrinking goodwill towards the UK in Europe. By comparison the proposal to replace the Human Rights Act with a British bill of rights which might not be ECHR compliant is small fry, with a less binary outcome. The ECtHR has clearly tried to respond to UK sensitivities in its recent judgements, and the Council of Europe Committee of Ministers can be expected to be similarly accommodating. To lose one of the founding members of the Council of Europe while retaining countries like Russia and Turkey would not help the organisation's credibility.

Decentralisation in England

The patchwork programme of decentralisation in England presents very different challenges. No monitoring is in place to evaluate which experiments succeed, or why. Accountability which is already blurred will become further fragmented. It will be less clear to ministers and officials who is responsible for what services in different parts of England; let alone to the media and the public. When scandals occur, whether of financial mismanagement or poor

⁹⁶ See Michael Emerson (Ed.) *Britain's Future in Europe: Reform, renegotiation, repatriation or succession?* Centre for European Policy Studies, 2015. Available: http://www.ceps.be/system/files/Britain%E2%80%99s%20Future%20in%20Europe_0.pdf

quality care, Whitehall will try to shift the blame to the new decentralised services. But if the decentralisation plans were rushed and inadequate, or not accompanied by proper funding, Parliament and the media may blame the government.

The instinctive response of Whitehall has been to re-centralise when things go wrong, and it will require a determined government to persist with decentralisation; especially if it appears to exacerbate local and regional inequalities. It is hard to believe that Whitehall can let a thousand flowers bloom indefinitely; at some point pressures will mount to introduce greater uniformity in the patchwork jungle. What form that will take is hard to predict. Although both main parties have wanted at different times to see unitary authorities, and elected mayors, they have lacked the political will to impose them against local wishes. Labour similarly lacked the will to impose regional assemblies. Elected mayors might seem the most likely outcome; but they would have to be imposed against parties' most important local members, their councillors.

English votes on English laws

EVEL presents challenges of a different kind, mainly for a Labour government. If the English majority (which would be Conservative dominated) sought to veto legislation which it did not support, then 'English' Departments such as Health and Education would not be able to implement the policy of the elected UK Government. Whitehall is capable of finding ways through that. Arrangements could be put in place to consult other parties on proposed legislation, with horse-trading to see what could be agreed upon. At local government level, such discussions between Labour and Conservatives are not unknown. Some would argue that obliging governments to become more consultative with the Opposition would be a positive thing, but it would still be counter cultural. It would also be one-sided in that a national Labour Government would need to do deals with an English Conservative majority; but a Conservative-led UK Government would be able to operate without doing so.

EVEL would, of course, be far less of a revolution in Whitehall than a full blown federal structure. Under a federal structure with separate elections for an English Parliament Departments would become clearly delineated as either "UK" or "English". The distinction could be just as much physical as conceptual in that there would be pressure to locate an English Parliament away from Westminster. Whitehall would similarly be split between Departments which belonged to the UK Government - most obviously the FCO and the MoD – and those Departments which would report to the English Government – for example Health and Education. Most departments have a mix of functions which extend variously across the whole UK, Great Britain, England and Wales, and England only. These would all need teasing apart. The remaining functions would need to be brought together into amalgamated departments, to preserve critical mass and expertise.

Further austerity, and Whitehall skills

Further austerity will also add to the pressures for merger of small departments in Whitehall, or at least merger of back office functions. It will also add to pressures for more devolution and decentralisation, as Whitehall seeks to offload functions which it can no longer afford. Civil servants will need entrepreneurial skills and imagination as they are asked to do even more with even less. To reduce expenditure, there will be further contracting out and privatisation. Civil servants will also need stronger political skills, especially in minority

parliaments, to support and be part of the cross party negotiations which will be required to get government measures through. Such negotiations are common in the House of Lords; in future they will be a more regular feature in the House of Commons.

Significant areas of Whitehall still have the habits of majoritarian government and a largely command and control structure. The current generation of senior civil servants has never supported a minority Government, and is not used to having to negotiate directly with opposition parties whether in Westminster or elsewhere. Nor have Ministers in the UK Government had to strike deals with minority parties simply to get things done – and they certainly have no real experience except in the EU context of authorising their officials to negotiate deals with their political opponents. This does not mean that Whitehall cannot acquire the necessary skills - as officials in Edinburgh and Cardiff have been obliged to do in recent years - but it will require a conscious effort to invest in developing political negotiation skills for many more of its senior staff.

2.6.2 Westminster

Potential reforms in the structure of Whitehall as a result of increasing constitutional change would undoubtedly be mirrored by changes in Westminster. The next section 2.7 looks at the possibility of a restructured House of Lords operating as a federal chamber, but change would be essential in the Commons as well: in its legislative processes, Select Committee structure, representation from different parts of the UK, and relations with the devolved legislatures.

Westminster as a Three in One legislature

It is insufficiently recognised how important Westminster has remained as a legislature for Scotland, Wales and Northern Ireland post devolution. This is not simply because of the volume of all-UK legislation, which has been half its total legislative output; but also because of the other half, bills for England and Wales (one third of the total), for Great Britain (one tenth), and for other parts of the UK. Simply measured by number of Acts, the quantum of Westminster legislation applying to Scotland in 1999-2004 was 50 per cent greater than legislation passed by the Scottish Parliament; and the quantum of subordinate legislation 100 per cent greater.⁹⁷ For Wales the proportions were much greater. These figures will change as more legislative power is devolved, particularly to Wales; but they are a reminder of the continuing importance of Westminster as a legislature.

Reducing the number of Scottish, Welsh and Northern Irish MPs

That is relevant when coming to consider whether post devolution there should be a reduction in Scottish, Welsh and Northern Irish representation at Westminster. Pre-devolution Scotland and Wales were over-represented. Scottish over-representation was corrected in the Scotland Act 1998, which reduced the number of Scottish MPs from 72 to 59; but has since become over-represented again with relative population changes. Wales remains over-represented, with 40 MPs when *pro rata* to population Wales should have 31.

⁹⁷ Robert Hazell, 'Westminster as a 'Three-in-One' Legislature' in R Hazell and R Rawlings, eds, *Devolution, Law Making and the Constitution*, Imprint Academic, 2005 at pp 228 and 234. The figures are for 1999 to 2004.

The relative populations and number of seats in each part of the country are shown in Figure 2.3. Further details of population and representation are given in Figure 2.4.

Figure 2.3 Scottish, Welsh and Northern Irish representation at Westminster

	England	Scotland	Wales	N Ireland	Total
Population in mid 2013	53.9m	5.3m	3.1m	2.8m	64.1m
Current number of MPs at Westminster	533	59	40	18	650
No of MPs if proportionate to population	546	54	31	18	649
Planned no of MPs in 2013 boundary review	502	52	30	16	600
No of MPs with one third reduction in Sc, W and NI	502	35	20	11	568

Figure 2.4 Current House of Commons representation from UK's nations and regions

	Population ⁹⁸	MPs	Total population per MP ⁹⁹	Variation from UK average
England	53,865,817	533	101,062	102
North East	2,610,481	29	90,017	91
North West	7,103,260	75	94,710	96
Y'shire/Humber	5,337,710	54	98,846	100
East Midlands	4,598,729	46	99,972	101
West Midlands	5,674,712	59	96,182	98
East England	5,954,169	58	102,658	104
London	8,416,535	73	115,295	117
South East	8,792,626	84	104,674	106
South West	5,377,595	55	97,774	99
N Ireland	1,829,725	18	101,651	103
Scotland	5,327,700	59	90,300	91
Wales	3,082,412	40	77,060	78
UK	64,105,654	650	98,624	100

⁹⁸ Data taken from Office for National Statistics, *UK Population estimates 2013*, ONS, 26 June 2014. Available: <<http://www.ons.gov.uk/ons/rel/pop-estimate/population-estimates-for-uk--england-and-wales--scotland-and-northern-ireland/2013/sty-population-estimates.html>>

⁹⁹ These calculations use the total population for each region, not total electors.

Scottish and Welsh over-representation would have been corrected in the 2013 boundary review, which would also have reduced the size of the House of Commons to 600 MPs (row 4 in Figure 2.3). That review is due to re-start in 2015, for completion by 2018.¹⁰⁰ But as devolution goes further in Scotland, Wales and Northern Ireland, the question will be raised whether they should continue to be entitled to equal representation with England, when their MPs have less to do. The only precedent for lesser representation is the one third reduction in the number of Northern Ireland MPs during the 50 years of the Stormont Parliament from 1922 to 1972. Row 5 in Figure 2.3 shows the impact of a one third reduction on top of the 2013 boundary review.

It is not easy to determine whether there should be a reduction, and if so how much. There are several different indicators of MPs' workloads and activity rates: participation rates in divisions, constituency caseloads, membership of Select Committees, tabling of Parliamentary Questions. Early research suggested that while the caseloads of Scottish, Welsh and Northern Irish MPs had declined since devolution, the number of their PQs remained the same, and their membership of Select Committees had gone up.¹⁰¹ But even if their workloads have declined, a case can be made for retaining equal representation, in much the same way that in some federal second chambers the states have equal representation regardless of size. On issues such as going to war, or leaving the EU, are Scottish, Welsh and Northern Irish MPs (and their constituents) not entitled to an equal voice alongside England?

The Select Committees

Participation in Select Committees by Scottish, Welsh and Northern Irish MPs is boosted by their membership of the separate Select Committees on Scottish, Welsh and Northern Ireland Affairs. The three territorial Select Committees mirror and reinforce the fragmentation in Whitehall of the separate Secretaries of State. There is no Commons committee which can view devolution in the round; that role has been assumed by the Lords Constitution Committee (and to a lesser extent, by the Commons Political and Constitutional Reform Committee). The McKay Commission and the Political and Constitutional Reform Committee have both called for a Devolution Committee, but it is most unlikely that the Commons would set up a single Devolution Committee without a lead from the government; and it is not known whether the PCRC will survive.¹⁰² So Westminster seems doomed to replicate the fragmentation and bilateralism which dominates Whitehall's approach to devolution. One possible incentive to change things might arise if the SNP sweep the board in Scotland and then mock the government for giving them a minority of seats on the Scottish Affairs Committee: their representation could be diluted on a Devolution Committee.

Relations with the devolved legislatures

In the early years of devolution it was hoped that intergovernmental relations might be fostered by closer inter-parliamentary relations. That has not happened for a range of

¹⁰⁰ A reduction to 600 seats is part of the Conservative Party Manifesto 2015, *Strong leadership, a clear economic plan, brighter, more secure future*, p49.

¹⁰¹ Meg Russell and Guy Lodge, 'The Government of England by Westminster' in R Hazell (ed), *The English Question*, 2006 at pp 68-9. For participation rates in divisions, see Oonagh Gay, 'The Experience at Westminster' in R Hazell (ed), *The State of the Nations 2003*, Imprint Academic at p 176.

¹⁰² McKay Commission, *The Consequences of Devolution for the House of Commons*, March 2013. Political and Constitutional Reform Committee, *The Future of Devolution after the Scottish Referendum*, HC 700, March 2015.

reasons: lack of interest; difficulties of synchronising different political and parliamentary timetables; technical difficulties to do with parliamentary privilege; and the difficulty of finding a common project. So there has been no joint scrutiny of the devolution settlements, or intergovernmental relations; instead there has been separate scrutiny of the UK and devolved governments, with occasional appearances by ministers from one level before committees at another. This is a pity because Westminster could learn from the devolved legislatures, not least from their experience of subject committees which combine scrutiny of the executive with scrutiny of legislation; and from their experience of minority and coalition government. But the Westminster culture still tends to be condescending; here as in other respects Westminster needs to show greater respect and parity of esteem.

A related issue is the impact further devolution might have on political careers. Ambitious UK politicians have gravitated towards Westminster; the devolved assemblies - and the European Parliament - are regarded as second best. But the current and previous SNP leaders were not Westminster MPs at the time of their leadership. So there could be a drift of ambitious Scottish and Welsh Labour politicians to Edinburgh and Cardiff. Were England in due course to establish its own Parliament the First Minister might be more prominent than most ministers in the UK Government - in a full federal system, the UK level government might be regarded as having markedly less impact on the lives of voters than the senior members of the devolved governments.

None of these developments in Westminster (or Whitehall) are inevitable. Constitutional change may continue to proceed slowly if only because there is no consensus on what change is needed, so the current system limps on. But Whitehall and Westminster should not assume that stasis equals stability.

2.7 Westminster: a federal second chamber, to represent the nations and regions

There have been calls for a second chamber to represent the nations and regions of the UK. The underlying assumption is that a reformed second chamber could bind together the nations and regions at the UK level by representing them directly in the Westminster parliament. That is the theory; but experience elsewhere suggests it may be difficult to realise in practice. Federal second chambers rarely operate to bind a federation together, because they rarely contain representatives of state governments or parliaments.

Second chambers in federal systems can be directly elected, indirectly elected or appointed. Examples of all three types can be found in the larger countries of the Commonwealth; but whatever the method of selection they tend to be party chambers first, and federal institutions second. The Australian Senate is a powerful second chamber, a strong check and balance, but it does nothing for the federation. Its directly elected members represent the people of the states, not the states themselves, and they vote on strict party lines. The Canadian Senate is all appointed and relatively weak, but its members also vote on party lines, not as representatives of the provinces.

Indirect election appears to be a more promising model for a federal second chamber. But should it be elected by the state parliaments (as in India) or local government (as in France or Ireland); or contain representatives of the state governments, as in the German Bundesrat? Only the German model offers functional representation of the states at the federal level: in the other models members of the second chamber are party politicians first, and representing their states or localities comes a long way second. Even in Germany the party balance in the Bundesrat is crucial.

There is a further difficulty in the UK with deciding the constituent units for a federal chamber of the nations and regions. Scotland, Wales and Northern Ireland would be represented as nations; what are the corresponding units in England? Most proposals for a directly elected second chamber have relied on the same regional constituencies as are used in elections for the European Parliament, using a regional list system. This would result in a party dominated chamber, with weak local ties.

In terms of institutional design to bind a federation together, the machinery of intergovernmental relations is generally far more important than the design of the second chamber. The German Bundesrat is the only second chamber which enables the state governments to negotiate with each other and the federal government over federal policy. In other federations that is achieved through the machinery of intergovernmental relations: in Australia COAG, the Council of Australian Governments; in Canada through the Minister for Federal-Provincial Relations. But the machinery only works if there is political will from the Prime Minister to make it work; in Australia and in Canada that is currently at a low level.

2.8 The leverage of nationalist blocs at Westminster

2.8.1 Westminster if the SNP hold the balance of power

According to the opinion polls, the 45% Yes vote in the referendum could become an SNP vote in the general election, making the SNP the third largest party at Westminster, and a kingmaker or wrecker of any potential government. Other small parties might be a first port of call for the Conservatives or Labour, but a grouping of 40-50 SNP members could help to secure a majority for a party which had gained 280 seats.

The SNP have ruled out a formal coalition and have also said that they would not support a Conservative government (that may reduce their bargaining power, but it reflects the views of their supporters, who have moved markedly to the left). What appears to be on offer is a formal confidence and supply agreement, or support for a minority government on a case-by-case basis.

Nicola Sturgeon has restated her commitment to "full fiscal autonomy" or Devo Max, with the Scottish Parliament having control over all taxation and spending, ceding only defence and foreign affairs to Westminster. This is close to independence, but as a commonsensical

notion attracts majority support among Scottish voters. The SNP will press for Devo Max in the first year of a new Parliament: the vehicle will be the legislation implementing Smith.¹⁰³

In principle it would mean devolving all taxes, except VAT (all of whose yield might be assigned), and pensions and benefits, to be funded from Scottish taxation. The Scottish government would have to be able to run deficit funding borrowing directly from the markets. (The resultant economic divergence might make a sterling currency union in the long run unstable: but most of that risk would be borne by Scotland). The SNP resolutely ignore the fiscal problems this would cause, preferring to believe that with these powers the economy could grow enough to support Scotland's 10%+ higher than UK average spending (see 2.1.6).

Alex Salmond has said, 'If you hold the balance, then you hold the power'.¹⁰⁴ But history offers some cautionary lessons. For most of the 40 years between 1874 and 1914 the Irish parliamentary party under Parnell and then Redmond was in a pivotal position at Westminster. Although they did secure much desired land reform, despite all their obstruction and filibusters they made no progress on home rule. It was not until the abolition of the Lords veto in 1911 (supported by the Irish party) that it became possible to pass the Home Rule Act in 1914. After that Ulster exceptionalism, suspension of the Act following the outbreak of war, the Easter rising in 1916 and Sinn Fein tactics after the 1918 election made the 1914 Act inoperable, as well as the subsequent Government of Ireland Act 1920.

2.8.2 Minority nationalist parties and their leverage in a national parliament: Canada

There are lessons also from the experience of minority-nationalist parties in other countries. In Canada, the separatist *Parti Québécois* has limited itself to Quebec elections. Its counterpart for federal elections, the *Bloc Québécois*, was established in 1991, between the two independence referendums and after the failure of Meech Lake. In 1993 the Bloc won 54 out of 75 Quebec seats in the Canadian House of Commons of 308 seats. The implosion of the Progressive Conservative Party meant that it formed the official opposition to the Liberals in the 1993-97 Parliament. It remained a significant force for almost 20 years, winning seats as follows:

Table 2.5 Electoral success of Bloc Québécois in Canadian federal Parliament

Federal election	No of Quebec seats (out of 75)
1993	54
1997	44
2000	38
2004	54
2006	51
2008	49
2011	4

¹⁰³ 'Scottish leaders debate: SNP plan 'devo max' vote', *The Scotsman*, 8 April 2015. Available:

<<http://www.scotsman.com/news/politics/top-stories/scots-leaders-debate-snp-plan-devo-max-vote-1-3741326>>

¹⁰⁴ Daniel Sanderson, 'Salmond: if you hold the balance, then you hold the power.' *The Herald*, 22 March 2015. Available: <<http://www.heraldscotland.com/politics/scottish-politics/salmond-if-you-hold-the-balance-then-you-hold-the-power.121271826>>

At no time has the Bloc been able to enter government. Although established to provide a 'voice for Quebec' in the federal Parliament, it has had relatively little impact on federal politics. It was unable to hinder the passage of the Clarity Act on the terms of a future independence referendum in 2000-2001. The mere suggestion in 2008 that an anti-Conservative coalition of the Liberals and the New Democratic Party (NDP) would rely on support from the Bloc was enough to undermine public support for that option in English-speaking Canada. This political isolation may help explain the Bloc's dramatic fall in the 2011 election. Most of the Bloc's vote appears to have gone to the NDP, which shares the Bloc's left-of-centre policy agenda but is traditionally an advocate of a strong federal government rather than provincial autonomy. One lesson from the history of the Bloc is that other parties should not give up in Scotland: the SNP's electoral dominance may not last for ever.

The effect of voting for the Bloc was to exclude a large proportion of Quebec voters from meaningful involvement in the politics of Canada as a whole, undermining Canadian democracy as well as fuelling the disenchantment that led to the close result in the 1995 referendum. The Bloc's recent decline (and that of the Parti Québécois in provincial elections) may suggest a desire by Quebec voters to re-engage in a politics shared with the rest of Canada; but it has taken a long time to reach that point.

2.8.3 Leverage of separatist parties in Spain

In Spain, several governments have depended on the support of the minority nationalist parties to form a majority. The conservative *Partido Popular* (PP) government of José Maria Aznar between 1996 and 2000 is one example, relying particularly on support from *Convergència i Unió* (CiU), the largest of the Catalan nationalist parties. (CiU has strongly middle class roots, and in social and economic policy lies on the moderate right. It has traditionally espoused a strong form of autonomy for Catalonia within Spain, rather than Catalan independence.) CiU supported the Aznar government in return for a number of concessions: the devolution of policing and prisons, some rationalisation of the financial framework, and representation for Catalonia on a number of central state bodies, including financial regulators and the Constitutional Court.

The other cases are the *Partido Socialista Obrero Español* (Spanish Socialist Workers' Party: PSOE) governments of José Luis Rodríguez Zapatero between 2004-08 and 2008-11. In both cases, the government relied on the support of other left-wing parties, including the secessionist-nationalist Catalan party *Esquerra Republicana de Catalunya* (ERC) for its confidence votes, but not more generally. The Catalan government sought a new Statute of Autonomy, extending the powers of the Catalan parliament and government. This process was initiated by Catalan socialist governments, but the deal that resulted in the new Statute was negotiated between the Spanish prime minister and Artur Mas, leader of CiU and of the opposition in Catalonia. It passed the Congress of Deputies with opposition only from the PP and ERC, though with ERC support in the Senate. The 2006 revised Statute of Autonomy was referred to the Constitutional Court, which finally in 2010 ruled that most of the Statute was contrary to the Spanish Constitution – a rejection which has led to the current debates about a referendum on secession.

While CiU (and other minority nationalist parties) in Spain have used leverage in the central parliament, and done so with some success, the overall outcome has not been particularly beneficial for Spain or for Catalonia. Modest and incremental reforms which worked to the advantage of both parties were secured; larger ones were blocked by the courts, with awkward consequences. The main Catalan actor had been an autonomist but not secessionist party. The failure of the 2006 Statute of Autonomy has propelled CiU and Mas to support secession instead.

Part 3: Facing the Future

3.1 Post 2015 Election Scenarios

Whatever the election outcome, there is a common devolution *acquis* which all the main parties will have to accept and continue to progress after May 2015, because they have committed to doing so. This includes the Smith Commission package in Scotland; the St David's Day process in Wales; the Stormont House agreement in Northern Ireland. Of the two main parties, the Conservatives are more relaxed about further devolution than Labour, because they believe more strongly in fiscal responsibility, they worry less about inequality, and they are not worried about any consequential reduction in Scottish or Welsh MPs at Westminster.

The *acquis* should not necessarily be taken for granted. Smith has been agreed only by the party leaders, not by their parties, or Parliament. In a minority Parliament the whips will have their work cut out, and there may not be majorities for particular proposals (as Labour found with their devolution legislation in the 1970s). So the Smith package may become Smith plus, or Smith minus. There is likely to be a fierce tug of war between the SNP government using the legislative consent veto of the Scottish Parliament to push for the maximum (see 1.1.5), and devo-sceptic backbenchers pressing for the minimum.

The following illustrate a few of the main possible scenarios; and Figure 3.1 at the end of this chapter sketches a forward chronology for the 2015-20 Parliament which might result.

3.1.1 Conservative majority, or Conservative led coalition

The Conservatives would hold an In/Out referendum on the EU, and if in coalition would allow coalition partners to campaign on opposing sides (as happened with the AV referendum). Conservatives might also campaign on opposing sides, and the Conservative party might split. If the vote is to remain in the EU, Conservative eurosceptics are no more likely to accept that as a lasting result than the SNP have accepted Scotland's decision to remain in the UK. Voting across the UK might also split, with England voting to leave the EU, but Scotland, Wales and Northern Ireland voting to remain; although public opinion surveys show much closer attitudes to the EU in Scotland and England than is commonly supposed (see section 1.4.1). If the vote is to leave the EU, but Scotland votes to remain, Scotland will press again for independence. This could take place in a free standing

referendum, or one timed to coincide with the 2020 Westminster elections or the 2021 Holyrood elections.

The Conservatives will also seek to introduce English votes on English laws, and test out their preferred form of EVEL (with a Legislative Consent Motion amounting to an English veto). But since the Conservatives will have a majority in England this will be a dry run with no political bite. They may try to enshrine the new procedure in statute, to make it more permanent; but they will be strongly advised to do so only in Standing Orders, so that the Speaker's rulings on what counts as an English law cannot be challenged in the courts (see 2.5.2).

The Conservatives will revive their plans to reduce the size of the House of Commons to 600 seats, which includes reducing Scottish representation from 59 to 52, and Welsh representation from 40 to 30 MPs. If the Conservatives are dependent on support from Scotland or Northern Ireland they are unlikely to propose any further seat reductions there.

Conservative proposals to repeal the Human Rights Act and replace it with a British bill of rights will cause tension with the devolved governments, who are all attached to the ECHR. The proposals are unlikely to be granted legislative consent motions by the devolved legislatures, and are also unlikely to pass the House of Lords. If the Conservatives are in coalition with the Liberal Democrats, the proposals are likely to be blocked by the Lib Dems, as they were in the 2010 government.

3.1.2 Labour majority, or Labour led coalition

Labour's main commitment is to establish a constitutional convention, but is less clear about its scope or terms of reference. Although part of the rationale is to consider devolution in the round, Scotland, Wales and Northern Ireland may initially have to be left out because of commitments to implement Smith, St David's Day and Stormont House. So the convention may be invited to consider devolution in England, which is a daunting task because the situation is so messy, with few obvious solutions. EVEL would also be referred to the convention, but a Labour government might not like the answers (opinion polls have long shown strong public support for EVEL). As a third task the convention would be asked to design a second chamber of the nations and regions.¹⁰⁵

This will buy time in the first year or two, but has risks. The convention may fail to agree. If it does come forward with proposals, there will be a strong expectation that the government will implement them, because they have the added legitimacy of being produced by citizens, not politicians. Meanwhile the government will legislate the Smith proposals for Scotland, and consider how far to go in Wales. A Labour government will be more cautious about imposing the St David's Day agreement, because of hostility from the devo-sceptic Welsh Labour MPs, and reluctance to impose taxes onto a Welsh Labour government which does not want to have them.

A Labour government will not hold a referendum on EU membership, and will not seek to repeal the Human Rights Act. Just in terms of its European policies, this would make it an

¹⁰⁵ Labour party manifesto 2015, pp 63-64.

easier bedfellow for the Liberal Democrats, who have also supported Labour's plans for a constitutional convention.

3.1.3 Labour minority government with SNP support, or DUP

A Labour minority government will pursue the same agenda as above. But if it is dependent on SNP support, whether in a supply and confidence agreement or on a case-by-case basis, the SNP will expect some concessions in return. These could include:

- Softening the austerity programme (the SNP want to see public expenditure increased by ½ per cent, or £180bn over the next five years)
- A review of Trident, or further postponement of its replacement
- Insisting on Smith plus, to include devolution of further taxes and welfare budgets.

The SNP will try to ensure a generous funding package, so that the risks of greater fiscal responsibility are cushioned by continuing Barnett support. They will not be worried if the package is unsustainable or causes continuing friction; part of their tactic is to provoke, in the hope that the English become so irritated that eventually the Scots are asked to leave.

The DUP believe Labour would prefer their support to that of the SNP. Coalition is unlikely, as the DUP entering the UK government would seriously unbalance the Good Friday Agreement. To gain their support, Labour would have to offer a referendum on Europe unless the next Prime Minister was able to “regain British sovereignty on issues like border controls and immigration”.¹⁰⁶

3.1.4 Conservative minority government with DUP support

The DUP have 8 seats in the current Parliament (Sinn Fein have 5, the SDLP 3, and Alliance 1). Traditionally leaning more towards the Conservatives, the price of coalition would be policies that “see the entire Union prosper”. These include maintaining 2% spending on defence, denying automatic welfare to immigrants and scrapping the bedroom tax. At the head of their terms would be a further economic package for Northern Ireland of “several hundreds of millions” a year. Such a package would close the gap between the terms of the Stormont House Agreement and the demands of Sinn Fein who have been holding it up. The DUP would expect the next government to honour the promise of devolving corporation tax to Stormont.¹⁰⁷ They would oppose English votes on English laws, or other measures which reduced the voting rights of non-English MPs.¹⁰⁸

¹⁰⁶ Henry McDonald, ‘Labour anxious about possible SNP coalition, says Democratic Unionist leader’, *The Guardian*, 10 February 2015. Available: <<http://www.theguardian.com/politics/2015/feb/10/labour-snp-coalition-ulster-unionist-leader-dodds>>

¹⁰⁷ Nicholas Watt, ‘Democratic Unionist Westminster leader lays out demands for supporting government’, *The Guardian*, 11 March 2015. Available: <<http://www.theguardian.com/politics/2015/mar/11/democratic-unionist-party-leader-lays-out-demands-for-joining-governmentW>>

¹⁰⁸ ‘No one who backs the UK can deny the legitimacy of the SNP ... I disagree with Nicola Sturgeon, but the Tories’ English votes for English laws plan is a constitutional mess’ Nigel Dodds, DUP Deputy Leader, writing in *The Guardian* 26 April 2015, <http://www.theguardian.com/commentisfree/2015/apr/26/uk-legitimacy-snp-nicola-sturgeon-tories-english-votes-law>.

3.1.5 Conservative minority government with SNP support

The SNP's pre election rhetoric has been vehemently anti Tory, because they are targeting Labour-held seats where there is no longer a solid Labour majority, but there is an anti Tory majority for the taking. Post election the SNP stance may change, if the Conservatives were willing to offer Devo Max or something close to it. If this seems unthinkable, it is worth remembering that it was the Scottish Conservatives who helped to keep Salmond's minority government afloat from 2007 to 2011, supporting it far more often than Labour or the Lib Dems.

The basis for a deal could be full fiscal autonomy, in return for a strong form of EVEL, and a radical reduction in Scottish representation at Westminster. The Conservatives are keener on tax devolution than Labour, because they strongly dislike the Scottish government being responsible only for spending money but not raising it. And they are more relaxed about welfare devolution, because they worry less about regional and social inequality. But it would cause a rift between the (staunchly unionist) Scottish Conservatives and the party leadership in London: the Conservatives would be forced to choose whether they are predominantly an English party, or a party of the Union.

3.1.6 Grand coalition of Labour and Conservatives

This seems even more unthinkable, and may emerge only in the face of the kind of crisis which has given rise in the past to National governments: economic crisis as in 1931 (if a Greek exit from the euro triggers meltdown in the Eurozone), or a security crisis as in WW1 or WW2 (if Russia destabilises more of eastern Europe). But it is just conceivable, if the Conservatives and Labour both fear that a deal with the SNP could lead to the break up of the Union, that they might join forces to prevent that happening. The bipartisan policy which has developed in relation to Northern Ireland could be extended to Scotland.

3.2 Future models for the Union

In conclusion, we return to our opening analysis in section 1.1, by using the models of a political union, economic union and social union to illustrate different future models for the UK. In each case the model starts with the status quo, and then expands to illustrate how further devolution might loosen the current system. Broadly speaking, loosening of the political, economic and social unions is likely to move in tandem. The big unknown is England, which retains a highly centralised system of government, and where the drivers for decentralisation are not very strong.

3.2.1 Different forms of political union

The options range from the status quo to a loose confederation:

The status quo: an asymmetrical, 15%, quasi-federation. Scotland, Wales and Northern Ireland all have devolved parliaments with significant legislative powers, and will gain further tax raising power. England remains the gaping hole, with little or no devolution. English local government continues to be a patchwork of two tier and unitary authorities, with static

or shrinking revenue raising powers, and growing dependence on central government grants and competitive funding programmes.

A 100% federation. This could be a federation of the four historic nations of the UK, with England having an English Parliament, with powers similar to those of the Scottish Parliament. If an English Parliament was considered too dominant, England could be divided into eight regions plus London (as happened under the Major and Blair governments), creating a federation of 12 more equal sized units. This would be a neater, more symmetrical federal design, but there has been no interest in regional government since the 2004 defeat of the proposals for a North East regional assembly, and much of the regional infrastructure (RDAs, regional chambers) has been dismantled. It would also be very asymmetric in terms of powers, since no one has proposed legislative powers for the English regions.

A looser confederation. In this model the Union would survive, but only just. There would be Devo Max to the four nations of the UK, who would have full fiscal autonomy, and be financially independent, like the Channel Isles and the Isle of Man. They would cease to have any representation at Westminster, which would become the English Parliament, and Whitehall the English government. For defence and foreign affairs the four nations could come together in a Council of the Isles, to which they would contribute financially, and have voting power proportionate to their populations (like the EU Council of Ministers).¹⁰⁹

3.2.2 Different forms of economic union

In considering how much further the economic union might be loosened, key considerations are:

- The stability of the currency union
- Prudential regulation of banking and financial services
- Borrowing by sub national levels of government: will the UK govt be their guarantor, or will they be allowed to default (as in the US)?
- The capacity to redistribute resources, to reduce regional inequalities
- The transparency and effectiveness of grant distribution formulae (Barnett, revenue support grant)
- The integrity and effectiveness of the single market
- The integrity and effectiveness of the tax collection system.

It is also necessary to factor in the impact of further austerity, with forecast cuts of at least 15% for unprotected departments and services over the next three years. Will the cuts lead to unfunded mandates, devolution of functions and services without adequate funding support?

Here are three models loosed labelled Devo More to Devo Max:

¹⁰⁹ M Qvortrup and R Hazell, *The British-Irish Council: Nordic Lessons for the Council of the Isles*. Constitution Unit, 1998. <http://www.ucl.ac.uk/spp/publications/unit-publications/28.pdf>

Devo More. This is not the current status quo, but includes the outworking of the further fiscal devolution which has already been set in train under Smith, St David's Day etc. So it involves:

- substantial tax devolution to Scotland: all income tax, 10 VAT points, small land-related taxes and a power to introduce new taxes with Treasury consent
- Wales opting for a diluted version of the same: partial income tax devolution, land-related taxes
- Northern Ireland able to set its own corporation tax, limited to trading profits of activities there, and seeking greater leeway in defining 'parity' for social security
- City Deals etc in England: repackaging central government grants into bigger pots, de-ringfencing, transferring spending budgets but no wider policy levers. A patchwork process with bidding exercises, not a comprehensive devolution of powers across England.

Devo Even More

- devolution of corporation tax, as in Northern Ireland (that is, on trading profits, no control of allowances and exemptions)
- devolution of employer's National Insurance contributions – in effect a payroll tax to pay for welfare services. This is the only major tax that is devolvable after income tax, but would itself require a major revamp of National Insurance generally
- in England, comprehensive devolution of spending budgets, matched by greater revenue raising power. Own revenues would be raised by decentralisation of business rates; and by property revaluation and higher bands of Council tax, enabling Councils to raise 50% or more of their revenue (as they did under the rates, before the poll tax).

Devo Max

- Full fiscal autonomy, so far as possible. Scotland would set and collect all taxes in Scotland and remit a portion to the UK Government for shared UK public services.
- VAT would need to remain set at UK level, as there must only be a single VAT in an EU member state
- Corporation tax would be subject to state aid rules, but a system of full fiscal autonomy would satisfy that
- The UK Government would retain responsibility for the currency and monetary policy
- Does it follow that the UK would maintain regulation of the financial sector; utilities and energy policy; competition policy; regulation and taxation of North Sea oil and gas?
- There would still be a single UK market, as part of the single European market
- In England, devolution of the health service, plus local income tax. This would enable Councils to raise most of their own revenue, through income and property tax.

3.2.3 Different forms of social union

It is hard to separate out welfare benefits from taxation, since some are levers of economic policy as well as social policy. There are conflicting considerations, with efficiency and equality competing with sensitivity to local needs. The competing principles are:

- Equal citizenship conferring equal entitlements (no postcode lotteries)
- Pooling of risks and resources across the whole population
- Efficiency of calculating and delivering large scale benefit operations (eg pensions)
- Sensitivity to individual and local needs
- The contributory principle for certain benefits (unemployment, old age pensions) but not others (child benefit, disability)
- The Australian and Canadian principles of equal levels of public services at equal levels of tax effort (see 3.3.7).

Again, we offer three loosely labelled models, from Devo More to Devo Max:

Devo More

- Smith proposals for welfare devolution to Scotland: substantial control over the housing element of Universal Credit, benefits related to caring and disability, administration of the Work Programme, and a power to supplement existing benefits or introduce new ones
- More limited welfare devolution to Wales
- Northern Ireland seeking greater leeway in defining parity for social security
- Limited experiments in England to devolve NHS budgets, to promote greater integration with social care.
-

Devo Even More

- devolution of further welfare functions. Jobcentre Plus, and management of all policies for the unemployed other than the employment and incapacity streams of Universal Credit (Jobseekers Allowance and Incapacity Benefit at present). If those streams of benefit were devolved as well, or the whole of Universal Credit, there would be little or no 'social union'.
- devolution of the minimum wage. This would enable a devolved government to improve wages at the bottom end of the income scale, but also encourage employers to retain low-wage staff and invest in training.
- Devolution of NHS budgets throughout England to combined upper tier or unitary authorities responsible for health and social care.

Devo Max

- Other than old age pensions, there would be no UK-wide welfare system. Scotland would organise and pay for its own welfare benefits
- There would therefore be no UK-wide 'social union'
- This would have effects on the parity principle for Northern Ireland
- Devolution of employment benefits in England.
-

3.2.4 Consequences of Devo More to Devo Max

The models are inevitably sketchy. Here is an equally sketchy account of the main consequences.

Devo More

- would result in significant divergences in social citizenship across the UK: what people can expect from tiers of government will vary significantly across the UK.
- it would become hard to rationalise such differences on the ground of fairness and redistribution, given the generosity of the underlying Barnett formula to Scotland.
- questions of where power lies in England would remain unresolved. City Deals etc transfer control of spending but not the wider policy levers needed for 'place shaping'. They also relate to geographical areas defined in historic and sometimes arbitrary ways. Moreover, City Deals substitute allocation of funds by relative need with bidding exercises, so 'fair redistribution' justifications are further undermined.
- this means there would be two sets of territorial 'losers': Wales (under-funded by Barnett); and outlying, mainly northern parts of England (which appear to do poorly in distribution of public funds generally). South-eastern England (which generates the revenue re-allocated) might also lose if its local authorities could not come together in City Deals etc.

Devo Even More

- Fiscal devolution of corporation tax and employers' NICs would increase the proportion of Scottish devolved spending raised from taxes rather than grant from about half under Smith to about two-thirds (assuming limited further devolution of welfare spending).
- Greater fiscal devolution will mean extensive changes to block grant funding, with reductions to allow for devolved taxes. These will necessarily be more complex and contentious than grant arrangements have been hitherto (see 3.3.6 below).
- What happens in and for England becomes a greater issue. Plans for a patchwork of 'super local authorities' with spending functions further decentralised (as the DevoManc package involves) will be ad hoc and urban-focussed. It will raise serious questions about the transparency and fairness of the way public spending is distributed as well as increasing regional inequalities in a haphazard way.
- It will also beg questions about local tax-raising. Non-domestic rate is the obvious tax to return to local control, but many in the business lobbies will resist that. There will also be questions about other land taxes, and a land development tax will be likely to raise its head.

In most respects, this sort of UK would be quite manageable from the centre's point of view, but hugely unequal (it would resemble the framework of Britain of the 1930s much more than the 1960s, though with a higher level of regional inequality than the 1930s). That might suit

a Conservative government keen on a smaller state and a lower tax burden, less so a Labour government keen on social policy and forms of redistribution and 'predistribution'. Such an unequal and limited state in turn raises the question of how the state as a whole demonstrates its value to all its citizens and shows them what they have in common: the value of maintaining a social citizenship as a means of pooling and distributing risks and resources.

However, there would be challenges to the machinery of government. There would need to be greater use of intergovernmental co-ordinating machinery, coupled with a realisation that devolved governments could neither be overlooked nor strong-armed. Much domestic policy would be more complex and take longer to be done, when central government could do it at all. HM Treasury would have to loosen control over fiscal aggregates and perhaps overall public sector borrowing, and manage them more loosely and at a higher level. Given its record, that is a serious challenge to both its current authority and its ways of working.

Devo Max

Devo Max would carry big financial risks for Scotland, because its own revenues would be inadequate (see section 2.1.6). The Institute of Fiscal Studies pointed out in a recent briefing that "the public finance challenges facing [a fiscally] independent Scotland would appear to be more substantial than those facing the rest of the UK....[because of] the weaker initial position of Scotland's public finances and the likely long-run decline in revenues for oil and gas production".¹¹⁰ Devo Max would have even less attraction for Wales and Northern Ireland, given their larger structural fiscal deficits. Nor is it clear what attraction this would have for other parts of the UK.

It would be impossible to devolve Employers NICs without fundamental changes to the National Insurance system that underpins UK-wide contributory benefits like the State Pension. A fiscally independent Scotland would find it prohibitively expensive to fund UK-level benefits like the new Single Tier Pension. This is because it would no longer benefit from the pooling facilitated by a UK-funded National Insurance Fund whose liabilities are underwritten by the Consolidated Fund, and the greater borrowing powers available to the UK government.

Under Devo Max the UK might be a sovereign state, but it would lack meaningful authority in part of its territory. There would be no system of tax redistribution or shared welfare arrangements to support any sense of shared 'social citizenship'. The UK Government would bear a set of risks relating to currency and monetary policy but without control over fiscal policy in relation to Scotland. England, Wales and Northern Ireland would have very little in common with Scotland, while Scotland would have established many of the institutions and other resources needed for full statehood. 'Devo Max' would therefore invite secession at any time Scotland grew discontented with the Union. (That in turn would raise questions about the value of such a policy for defence, if retaining the Trident bases on the Clyde were a goal).

¹¹⁰ IFS Briefing Note BN 148, *Taxation, government spending and the public finances of Scotland: updating the medium term outlook* (2014), p32. Available: < <http://www.ifs.org.uk/uploads/publications/bns/bn148.pdf>>

As a result, it is hard to see how Devo Max could be a stable, long-term settlement, even if it were portrayed as such. It does not enhance UK state capacity or even maintain it in any significant way. It is likely to be a staging post to Scottish independence, which we turn to next.

3.2.4 An independent Scotland

The goal of Scottish independence clearly remains a live one, perhaps more so (or for more people) than before the referendum campaign began. Independence begs a number of questions, notably about the extent to which it might have support from England and English voters, and consequently how amicable the ‘divorce’ might be, and how generous or otherwise the terms of independence.

Severing Scotland from the rest of the UK would affect the remaining state in a number of ways:

- Loss of international status and self-confidence.
- Loss of ability to base a nuclear deterrent on the Clyde. rUK would have to move its deterrent, or abandon it; or negotiate a lease, or sovereign base status as in Cyprus.
- Challenge it to manage financial redistribution and a welfare state between the ‘rich’ London and South East, and ‘poor’ of most other parts. Scotland’s departure would have removed the most ‘average’ part of the UK and made the basis of redistribution more open and apparent.
- If non-Scottish parts of the UK were made to bear more of the costs of their public services, they would improve in London and the South East (or produce a lower level of taxation), and deteriorate elsewhere (even with higher taxes). Consequently, regional inequalities within rUK would be reinforced, perhaps to the point of weakening support for the Union in Wales and northern England.
- Welsh independence could follow fairly rapidly on Scotland’s, if the redistribution system broke down and managing the long porous border appeared possible.
- Managing relations with an independent Scotland. This would involve a web of agreements between the two states, further complicated if either or both were not members of the EU.¹¹¹

In some ways, this smaller state would be easier to manage for the centre. But it would be smaller and weaker in key respects, and still face manifold internal challenges.

3.3 Parting Thoughts

For a unionist, all these scenarios will be alarming. But equally alarming is the lack of capacity in the UK government to think through the consequences, to be able to say confidently, ‘devolving x would damage the economic union’, or ‘devolving y would undermine the social union’. There are also risks in embarking on further devolution before

¹¹¹ JE Murkens with P Jones and M Keating, *Scottish Independence: A Practical Guide*. Edinburgh University Press, 2002, ch 4.

previous policies have been introduced, let alone had time to bed down. This concluding section offers some thoughts on how to minimise the risks, and how to improve the capacity in Whitehall and Westminster to face the future.

3.3.1 Devolution Pause and Catch Up

In the past devolution policy has developed gradually, after long periods of deliberation and consultation. The Scottish Constitutional Convention deliberated for six years; the Belfast Agreement took many years of negotiation. By contrast the Smith Commission took two months, with draft clauses published two months later. That is not speedy policy making; it is rushed to the point of recklessness. Smith's far ranging proposals will be legislated this year, before the income tax devolution in the Scotland Act 2012 has taken effect. This creates three difficulties. First, we have no idea whether the Smith package is consistent or stable, or will create pressures for further change. Second, there will be no opportunity to adjust policy in the light of experience. Third, public perceptions lag behind the legislative reality: most Scots are unaware that 10 points of income tax have already been devolved, because it has not yet come into force. Political and public expectations may make it very hard to slow down the devolution train; but wherever possible, devolution policies should be implemented and allowed time to bed in before the next round of policy is embarked upon.

3.3.2 But there will never be a steady state

Equally, those who call for a 'lasting settlement' or a 'clearer catalogue of devolved powers' or for a written constitution are fanciful in supposing this will deliver stability. The Scottish Question, the English Question – and the European Question – will always be with us, because these are deeply contested matters on which there will never be consensus. In countries with written constitutions, like France, Italy or Spain, debate still rages about the proper balance of power between the centre and the regions, and always will. Federations with catalogues of powers written into the constitution are no more stable: Australia has become highly centralised, Canada very decentralised, in both cases the opposite of what their founders and draftsmen had intended. The division of powers can never be watertight; effective policy rests upon cooperation between different levels of government, not on good drafting. Drafting is not a secure or long term solution; the secret to making federations work, and making devolution work, is a shared political commitment to make the system work, underpinned by good intergovernmental relations.

3.3.3 Strengthening intergovernmental relations

This has been the subject of many critical reports over the last 15 years. The most recent critiques are from the Institute for Government, and the Lords Constitution Committee.¹¹² Repetition may make Whitehall feel weary, but does not reduce the force of the recommendations:

- The need for a stronger centre to co-ordinate devolution strategy
- Merger of the different units spread across Cabinet Office and the territorial offices
- More active management of cross Whitehall networks of officials responsible for devolution

¹¹² Akash Paun and Robyn Munro, *Governing in an Ever Looser Union*, Institute for Government, February 2015; and Lords Constitution Committee, *Intergovernmental Relations in the UK*, HL 146, March 2015.

- JMC to be a shared forum of the four governments, not dominated by Whitehall
- JMC Domestic to be replaced by JMC Welfare, JMC Energy, JMC Environment etc
- Joint teams of officials to implement further changes, as with Scotland Act 2012.

It is as much the fault of the devolved governments as the UK government that intergovernmental relations have been neglected. They have little interest in multilateral meetings when most of their negotiations are bilateral. That may start to change, as the devolution settlements become more uniform, and Wales catches up with Scotland and Northern Ireland. In the meantime the UK government could manage bilateralism more effectively, so at least it is systematic and part of a wider strategy. To take Wales as an example, the Welsh Secretary could have monthly meetings with the First Minister, with a regular agenda, which would prompt periodic write rounds about Welsh matters and keep Whitehall on their toes.

As important as changing the machinery and processes is changing attitudes in Whitehall (see 3.3.5). To change attitudes it might help to change the language: to talk of governments and parliaments, not devolved administrations and their assemblies. Parity in language would help to introduce parity of esteem, and would help officials to recognise that in practice Westminster is no longer sovereign. (Who was sovereign on 18 September 2014?) With the requirement of legislative consent motions, the devolved governments and legislatures have an effective veto over any change to the devolution settlements, as well as devolved policies (and some reserved ones, eg the ECHR – see 1.4.2). The veto over changes to the devolution settlements means that the devolved governments and parliaments have control over their own constitutions, negatively but not positively.

3.3.4 Reconfiguring Whitehall and Westminster

One recurring criticism is the lack of a strong centre for devolution in Whitehall, because responsibility is so fragmented. There are six different centres, in the separate offices of the three territorial Secretaries of State, plus the Constitution Group in Cabinet Office, the Devolution team in the Treasury, and DCLG which leads on decentralisation in England. This fragmentation is mirrored in five committees with an interest in devolution at Westminster: the separate Commons Select Committees for Scotland, Wales and Northern Ireland, plus the Political and Constitutional Reform Committee, and in the Lords the Constitution Committee.

The separate territorial Secretaries of State are a hangover from the pre devolution era. The Constitution Unit has recommended for 15 years that they should be merged.¹¹³ Pre devolution Scotland, Wales and Northern Ireland needed their political voice to be heard in Cabinet; post devolution that political voice comes clearly from their governments and First Ministers. It would be much easier to have a strong, coherent and integrated policy on devolution if it was the responsibility of a single Cabinet Minister. It could be a more senior Minister with greater clout than the junior ranking Cabinet Ministers who typically hold these posts. It is no coincidence that in Cameron's outgoing Cabinet in March 2015 these Ministers were ranked at numbers 17, 19 and 20; and in Miliband's shadow Cabinet at 17, 18 and 19.

¹¹³ Robert Hazell, *Three into One won't go: the Future of the territorial Secretaries of State*. Constitution Unit, 2001. Available: <<https://www.ucl.ac.uk/spp/publications/unit-publications/69.pdf>>

They come right near the bottom. Merging their posts would save two places in Cabinet, and bring together three tiny offices in Whitehall.

That is the logical, constitutional case for merger, supported by more than one Cabinet Secretary. Politically the time has never been right. Prime Ministers have felt fearful of adverse reactions in Scotland, Wales and Northern Ireland at losing their separate voice in Cabinet, and reluctant to disappoint colleagues expecting a place in Cabinet. We make no apology for repeating the case, even if the timing is still not right. So long as Whitehall retains three territorial Secretaries of State, devolution policy remains doomed to be weak and fragmented. This is the single most important change Whitehall could make to put devolution on a stronger footing. Ministers of State could be appointed to manage bilateral relations with Scotland, Wales and Northern Ireland. But above them there needs to be a senior Cabinet Minister responsible for devolution and the Union. In making such an appointment the Prime Minister would indicate that the Union is a key government priority.

3.3.5 New Whitehall skills and attitude

The next most important change would be a change of attitude in Whitehall. Too many officials and departments tend to treat the devolved governments as an afterthought, or like any other Whitehall department. Devolution issues should be addressed in every policy submission, to remind Whitehall of potential spillover effects. For intergovernmental relations to work, Whitehall must be less dominant. With further devolution there will be more and more policy fields where responsibility is shared, and effective policy making requires co-operation across the reserved/devolved divide. Even to achieve its own policy goals, Whitehall needs to treat the devolved governments as equal partners.

This has long been the case in Europe, and European policy making indicates the skill sets required: to be outward looking, to understand the other governments' positions, to build coalitions of support, to be able to negotiate and to compromise. Similarly if we are entering an era of minority parliaments and minority governments, similar skills will be required to build coalitions of support for all government measures. Ministers cannot do that on their own: they will need advice on the positions of the other parties and the different groupings in Parliament, to enable them to build the necessary alliances. Civil servants will need lots of political skills and parliamentary intelligence to help chart the way. Westminster's majoritarian culture (see 3.3.8) has made life easy for Whitehall; all that is now changing.

Continuation of the Home Civil Service tends to be overstated as one of the factors supporting the smooth introduction of devolution. Creation of a Scottish or Welsh civil service would make little practical difference.¹¹⁴ It was a tribute to their professionalism that civil servants in Scotland and the UK loyally supported their respective governments during the independence referendum. But with the cuts, staff exchanges and secondments have collapsed. One way to promote better mutual understanding would be to include devolution in all senior staff training, for the fast stream, and entry into the Senior Civil Service; and courses like the Top Management Programme could include devolution case studies and visits to the devolved governments.

¹¹⁴ Plaid Cymru's 2015 manifesto has a commitment to introduce a Welsh civil service. The SNP had a similar commitment in 2007. They did not pursue it when they became aware of the cost of the Civil Service pension scheme: another of the hidden benefits of the Union.

3.3.7 Managing the new fiscal framework

This is going to be much more complicated once the devolved governments are responsible for raising some of their own revenue. In place of the single black box of the Barnett formula to calculate the annual block grant, there will be three black boxes: first, calculating what the block grant would have been; second, deducting a sum equivalent to the devolved government's new tax capacity; and third, applying the 'no detriment' principle. This last seeks to compensate the UK government or devolved government from knock-on consequences of a tax change by the other, but will provide scope for endless argument about quantum. To minimise the scope for argument, and manage the new system (which can no longer be managed by the Treasury alone) there needs to be a UK Territorial Funding Commission, as a more formal version of the JMC Finance Quad, with an expert advisory body like the Commonwealth Grants Commission (CGC) in Australia.

The CGC is an independent advisory body which recommends how revenues should be distributed to the States and Territories to achieve horizontal fiscal equalisation. Equalisation aims to put all states on a level fiscal playing field: the principle is that each state should be able to provide services at the same standard, if each made the same effort to raise revenue and operated at the same level of efficiency. The CGC responds to requests sent to it by the Commonwealth Treasurer. It makes its recommendations in consultation with the States and Territories and based on data provided by them and independent statistical sources. As an example, the CGC's most recent report is on the treatment of large and volatile State revenues in the horizontal equalisation system; to ensure transparency, after consideration by the Commonwealth government, the CGC's reports are published.¹¹⁵

As an example of the kind of issues that will need to be considered by a UK Territorial Funding Commission, enactment of the Smith proposals will markedly increase the fiscal powers available to the Scottish Government, relative to the Calman proposals due to be implemented in 2016 (see 1.3.2). However, the UK government retains control over the Income Tax base (the definition of income, personal allowances and tax reliefs), Corporation Tax and National Insurance Contributions. If a future Tory-led government were to implement the increases in personal allowances proposed in its manifesto, an SNP-led Scottish government would find that it would have to increase the Income tax rates required to raise any given amount of revenue from Scottish taxpayers.

3.3.7 The English Question, and a Constitutional Convention

The English Question is difficult for many different reasons. One is that no one knows confidently what the English want. It is said they want decentralisation, but to what level of government: to regions, counties, districts or parishes? Do they want two tier or unitary government? Do they want the health service devolved to regional or upper tier authorities? Do they want English votes on English laws, even if this leads to an English Parliament (which they say they don't want)? The only data available is from opinion polls, which are shallow, unreflective responses, uninformed by expert opinion, or deliberation.

¹¹⁵ The CGC's website is at <https://www.cgc.gov.au/>.

That is the argument for a constitutional convention, to include randomly selected citizens, to try to chart the way ahead. It is high risk, because it is hard to predict what it might recommend, and politicians might not like the consequences. But the current path, of a patchwork of special deals with individual cities or local leaders seems unsustainable. At some point the patchwork will need tidying up, by an expert commission or citizens' convention, or combination of the two.

3.3.8 The end of majoritarian politics?

If the UK has a series of hung Parliaments that may lead to a gradual adjustment of the majoritarian, winner takes all political culture. Politicians will be forced to adjust, learning in a parliament of minorities that governments have to operate on a cross party basis to get their business through. That is well understood in the House of Lords, where for 15 years the government has not had a majority, and is frequently defeated. It is not yet understood in the House of Commons, where we are used to governments having comfortable majorities (including the 2010 coalition). If the UK does develop a more pluralist, consensual political culture, it would make power sharing easier, both with devolved governments and at the European level. Politicians and officials would come to understand that all policy making involves compromise, at every level. The archetype of a successful politician would become Angela Merkel, not Margaret Thatcher.

Putting it that way shows how big a leap this would be. A series of hung Parliaments will not necessarily transform our majoritarian culture, because political, media and public reaction could go either way. If minority parliaments are seen as a return to the 1970s, with weak governments, frequently defeated and forced to make endless concessions, people may react negatively. But to avoid that outcome they would need to change their voting behaviour, by plumping for one of the major parties, which currently seems unlikely. It may also prove unlikely because people want two conflicting things. They want strong and effective government, but they also want a stronger and more assertive parliament.

That conflict can only be resolved by a further referendum on the voting system, which seems unlikely to come any time soon. If the UK ever does adopt proportional representation for Westminster, one side effect would be to take the sting out of the West Lothian Question: because it would reduce Conservative dominance in England, and Labour or SNP dominance in Scotland, which are both exaggerated by first-past-the-post.

Fig 3.1 Forward Chronology for further Devolution and Constitutional Change 2015-20

This calendar is a composite. Items in bold are known events. The remainder are forecasts. It includes items from both the Conservative and Labour manifestos, in blue and red respectively.

Date	UK level changes, inc EU Referendum Bill; Labour plans for Const Convention CC	Scotland	Wales	Northern Ireland	England
2015			Wales Act 2014 passed in Dec.	Corporation Tax (NI) Act passed in March	
Jan - Mar		Smith draft clauses published on 25 Jan	St David's Day: devo of income tax w optional referendum		Feb: Hague statement on preferred option for EVEL
May	UK election				Local elections
May - June	Parliamentary statement re Const Convn (CC). EVEL, Lords reform referred to CC. Spending review. New MoU of Devo Funding Policy	Scotland Bill introduced. Sewel motion from Sc Part? First devolved taxes start in April (Land Transactions tax + Landfill tax)		Confirmation of Stormont House Agreement?	English Devolution Bill announced New procedures for English votes on English laws. Queen's Speech lists bills subject to EVEL
July - Aug	EU Referendum Bill introduced. Negotiations with devolved govts and political parties re Const Convn		Further negotiations about St Davids Day package		English Devolution Bill introduced?
Oct	Start of Const Convention. Parliamentary boundary review re-started 2015-18	Scottish govt sets Scottish rate of income tax in budget			Manchester city region devo package?
2016					
Jan - Mar	EU Referendum Bill passed	Royal Assent for post-Smith Scotland bill?			English Devolution Act passed

May		Devolved election Holyrood	Devolved election Cardiff Bay	Devolved election Stormont	Local elections. London Mayor elections
April - June	Constitutional Convention produces first report	Devolved income tax rate under Scotland Act 2012 starts	Wales Act 2014 land tax powers devolved. New Wales Bill introduced?		
July - Sept					
Oct - Dec					
2017					
Jan - Mar					
April - June	In/Out EU Referendum Constitutional Convention produces final report		Royal Assent for post-St David's Day Wales bill?	NI can start to vary rate of corporation tax under 2015 Act	Local elections
July - Sept					
Oct - Dec					
2018					
Jan - Mar					
April - June					Local elections
July - Sept					
Oct - Dec					
2019					
Jan - Mar					
April - June					
June	European elections				
July - Sept					
Oct - Dec					
2020					
Jan - Mar					
April - June	UK election				
July - Sept					
Oct - Dec					
2021					
Jan - Mar					
April - June		Devolved election Holyrood	Devolved election Cardiff Bay	Devolved election Stormont	

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