

**Ref. 66**

## **State of the Union lecture 11 December 2000**

### **An unstable Union: Devolution and the English Question**

**By Robert Hazell**

#### **Introduction**

As you all know, this lecture was to have been given by Donald Dewar. He more than anyone else was the founding Father of the Scottish Parliament: a campaign to which he devoted his political life from the 1970s onwards. And when his dream was finally realised, he said

“I count myself lucky indeed to be playing my part in the hard work of turning a vision into reality: a working constitutional settlement not just here in Scotland but for the United Kingdom as a whole”.

It was the changes in the constitutional settlement for the UK as a whole that I had asked Donald to talk about tonight, and which it now falls to me, as a very inadequate substitute, to address in his place.

But before I address the State of the Union, I should like at the start to thank all those who have made this lecture possible. First, the Leverhulme Trust, who have generously funded the Constitution Unit to lead a five year research programme which we have entitled *The Nations and Regions: the Dynamics of Devolution*. Next the ESRC, who have kindly supported tonight's event as part of the launch of their new Research Programme into Devolution and Constitutional Change. Next our Leverhulme research partners: we have x partners spread across 12 projects in our *Nations and Regions* research programme, many of whom are here tonight. Last but not least, my own team in the Constitution Unit, who are also leading some of this research, and who have all contributed in different ways to tonight's lecture.

#### **Quarterly monitoring reports and annual review**

One of the projects which is now jointly funded by the Leverhulme Trust and the ESRC is a monitoring programme, which for the last year has published quarterly reports on the progress of devolution in Scotland, Wales and Northern Ireland. As of this year - beginning in November 2000 - we are including reports on the English regions, and on the impact of devolution on the centre, recording the consequential changes taking place in Westminster, Whitehall and the courts. These reports are instantly published on our website; but if any of you want notice each quarter when they are published, send us your email address, and we will send a quarterly reminder.

Our devolution monitoring partners have written half the chapters in the book we are launching today, *The State and the Nations: The First Year of Devolution in the UK*. They have been heroic in delivering their quarterly reports, and now their chapters for the book, to very tight deadlines: and in writing chapters of exceptional interest and quality. I commend them to you; as I do our publisher Keith Sutherland at Imprint Academic, who has produced the book in record time. He received the text in early October, and the book was ready in November. We hope over the next five years to

produce an annual review at the end of each year on the changes taking place as a result of devolution, and to launch it at an annual State of the Union lecture.

When I first invited Donald to give this lecture, I asked him to talk not just about Scotland, but to reflect more widely on the state of the Union after one year of devolution. That is the mantle that now falls to me. I am not going to attempt to cover every aspect of devolution - for that you have to buy the book, which does attempt to do so, and to provide a complete record, all in the space of 280 compact pages. Instead I am going to highlight just a few of the main themes.

## **An unstable Union**

The first is the instability of the devolution settlement. I don't want to sound alarmist, and I am certainly not joining those prophets like Tom Nairn who preach that the end of the Union is nigh. Seen from the Cabinet Office, the first year report must be that from a UK perspective devolution must be judged a success. It has not led to the break-up of Britain, which had been sternly predicted by Conservative (and some Labour) critics. The polling data in Scotland show that since devolution support for independence has declined slightly: rather than drawing us down that slippery slope, so far devolution appears to have strengthened the Union. There have been no major rows with the devolved governments: no ministerial walk-outs, no intergovernmental court battles of the kind which can be a regular feature of federal-state relations. So there is some justification for the mood of quiet assurance in Whitehall. The evolutionary, pragmatic approach has paid off; there have been teething troubles, but the UK government has not been unduly hampered in the conduct of its business; steady as she goes.

But look at the individual country chapters in our book and a rather different picture emerges. Here devolution can at best be described as having got off to a slow and rather shaky start. This is meant to be a stronger statement than the truism that the settlement will continue to evolve. In Northern Ireland, in Wales, even in Scotland there is growing questioning about the adequacy of the settlement; while in the English regions everything is still to play for.

### **Northern Ireland**

The settlement in Northern Ireland is particularly precarious. In their chapter on Northern Ireland Robin Wilson and Rick Wilford paint a stark picture of the fragility of the new institutions, and the many factors which could yet undermine them. Continuing battles over policing, flags and decommissioning, against a background of worsening paramilitary violence, could yet lead to the re-imposition of direct rule. But even without the troubles, it may be that the involuntary coalition which lies at the heart of the power sharing arrangements enshrined in the Belfast agreement is so unworkable that the Northern Ireland Executive has been set up to fail. Professor Alan Ward warned in advance that:

“Devolution can only work with power sharing if there is a supply of understanding, goodwill, and self-restraint amongst parties in the province that is unprecedented ... they are being asked to make something work that on its face is unworkable.”<sup>1</sup>

A similar warning came from one of the civil servants in Northern Ireland, who wrote that ‘the Executive itself will be an involuntary coalition with internal political tensions that could degenerate into continual attrition between and within unionist and nationalist blocs’. But Robin Wilson and Rick Wilford make the interesting observation that one way in which it might be made to work is by the Office of First and Deputy First Minister accruing more and more power, to overcome the centrifugal tendencies in the rest of the Executive. Their chapter records how this is gradually starting to happen. If the trend continues the four-party coalition would become centralised into a working coalition of the UUP and SDLP, focused on the Office of First and Deputy First Minister - a ‘government-within-a-government’, which might not be very democratic, but could be one way of getting the executive to work.

## **Wales**

In Wales fundamental questions are also being asked about the institutional design. Few Members of the National Assembly believe that it has sufficient powers to make a difference. The questioning goes right through to the top. During the first year of the Assembly’s life Ron Davies, its creator, then Lord Elis-Thomas its Presiding Officer, and lastly Rhodri Morgan as the new Leader have all expressed doubts about the design and functioning of the new body.

John Osmond, the leader of our monitoring team in Wales, suggests that the first year of devolution saw the Assembly gradually turn itself into a constitutional convention: the convention which, as Rhodri Morgan has observed, the Scots had before devolution, but the Welsh missed out on.<sup>2</sup> And since the coalition agreement between Labour and the Liberal Democrats in October, the constitutional rethink has speeded up, with a number of changes - some symbolic, some substantive - but all taking the Assembly in a parliamentary direction. The Assembly Secretaries have decided to call themselves Ministers, so we now have a First Minister and Deputy First Minister in Wales, as there are in Scotland and in Northern Ireland. A clearer separation of powers has been created between the Assembly and the Executive, with the Presiding Officer being given his own budget of £24m to run the Assembly. Rhodri Morgan has announced a wider review of the workings of the Assembly, led by a Review Group chaired by the Presiding Officer. Most significant in the longer term, the coalition agreement contains a commitment to establish ‘an independent commission into the powers and electoral arrangements of the National Assembly’.<sup>3</sup> That wider review of the Assembly’s powers, which is bound to address the central issue of whether the Assembly should have legislative power, is to report back in the first year of the Assembly’s second term.

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<sup>1</sup> Alan J Ward, ‘Devolution: Labour’s strange constitutional ‘design’’, in J Jowell and D Oliver, eds, *The Changing Constitution* 4th edn, Oxford Univ Press, 2000, at p 134.

<sup>2</sup> Rhodri Morgan, *Variable Geometry UK*, Institute of Welsh Affairs, March 2000.

<sup>3</sup> *Putting Wales First: The First Partnership Agreement of the National Assembly for Wales*, 6 October 2000.

These developments have gone unreported in the national press. Wales generally is poorly reported. As a result a lot of myths have grown up about devolution in Wales. The metropolitan view (shared equally by Fleet Street, Westminster and Labour headquarters in Millbank) is that the very close referendum result in September 1997 showed how wafer thin support was for devolution in Wales. Labour, it is held, was right to go for a very weak form of devolution, because the Welsh were not ready for more; and Labour was right to back pedal on regional government for England, because the Welsh showed how little appetite there was for devolution outside Scotland.

My own view is that the referendum result was so close because the referendum was held far too early. Devolution is a dynamic process: you must allow time for the dynamic to work its way through. In 1997 the people of Wales were bounced into a decision for which they were simply not ready. You can see that very clearly in the opinion polls in the period before the referendum, by looking at the proportion of Don't Knows. In Scotland there had been a long debate, engendered by the Constitutional Convention, and people had made up their minds, for or against, with the Don't Knows registering between 2 and 5 per cent. In Wales the proportion of Don't Knows was ten times higher. I know of no poll in the two years before the referendum in which the Don't Knows were less than 25 per cent; and on some they were as high as 40 per cent.

Why were the Welsh so undecided? Because they had no equivalent to the Scottish Constitutional Convention, and there had been no public debate. Attempts to establish a Welsh Constitutional Convention were rebuffed by the Wales Labour Party, which was desperate to avoid a public debate because it did not want to expose the schism within its own ranks; and in particular in the Welsh Executive, which had a strong anti-devolution group. It was to appease this group that Labour clung to the model of executive devolution, as the least threatening form of devolution they could devise. Whether it would command support amongst the public, and whether it would work, were secondary considerations: its primary purpose was to paper over the cracks within the Welsh Labour executive.

In fact the polling evidence suggests executive devolution didn't command much public support, even amongst Labour voters. On every opinion poll which asked Welsh supporters of devolution what kind of Assembly they wanted, they said they wanted one with law making powers: on two polls during the last general election campaign, they said this by a factor of 5 or even 7 to 1 (NOP for HTV Wales, April 1997). The latest poll, on the first anniversary of the Assembly (NOP for HTV Wales, July 2000), showed 43% saying the Assembly should have law making powers, against 28% saying it should continue with its present range of powers and responsibilities (and 23% saying it has failed and should be disbanded). This plurality support for law making power is found across all political parties, including supporters of the Labour Party. (Interestingly, it even commands plurality support in England: when the British Social Attitudes survey last year offered the English five options for the government of Wales, the one which commanded more support than any other was an elected parliament with law making and taxation powers).<sup>4</sup>

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<sup>4</sup> R Jowell (ed) British Social Attitudes survey, 2000, ch 8: 'Is the English Lion about to roar? National identity after devolution', by John Curtice and Anthony Heath, Table 8.8 at p 165.

At present these views of the people of Wales go unheard in London. Rhodri Morgan knows that, and recognises that the UK government will expect the model of executive devolution to be properly tested and demonstrably found wanting before Wales comes back for more. That is why he has set such a long timescale for the independent commission. The real test for Wales will come when the Assembly has developed a set of policies and proposals which require primary legislation from Westminster. The whole scheme of executive devolution is predicated on Westminster continuing to legislate for Wales: and on Whitehall taking account of Welsh interests each year when preparing the legislative programme, and giving the Welsh legislative time at Westminster. This was identified as the crucial stumbling block in the whole scheme in speeches about the first year of the Assembly given in summer 2000 by two senior figures: the Presiding Officer Lord Elis-Thomas and Labour's Lord Prys Davies.<sup>5</sup> Only when the Assembly finds that it is not accorded sufficient legislative time, or is not allowed sufficient headroom in Westminster legislation to develop its own distinctive policies, will Wales be able to mount a strong campaign that it needs to be given legislative powers.

I had thought that the spark for such a campaign might emerge from Rhodri Morgan's review group, currently due to report by about September 2001; or from the independent commission promised by the new coalition government, which is not due to report until 2004. But the patience of others may not last that long. Last week Ron Davies fired the starting gun in the campaign, by publishing a challenge to his fellow Assembly members - and to London. In his paper he said:

"Westminster knows that the Assembly cannot deliver its full potential within the structure currently operated and that if it fails to be more expansive and responsive to the needs of the Assembly, the calls for full powers over primary legislation will be irresistible."<sup>6</sup>

This from the godfather of executive devolution; but also the man who famously said that devolution is a process, and not an event. It is clear that Ron wants executive devolution to be as short-lived an event as possible; and for the process to start now. He is not alone. Everyone I know inside the system recognises that the model of executive devolution isn't working. It is very striking how at the end of the first year, legislative devolution in Wales is no longer regarded as a matter of if, but when. A majority of Assembly members, and a majority of the supporters of all parties in Wales bar the Conservatives,<sup>7</sup> are already convinced that the Assembly needs legislative powers if it is to function satisfactorily: what remains to be resolved is the timing of their campaign, and the need to convince their colleagues at Westminster.

## Scotland

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<sup>5</sup> Lord Elis-Thomas, *National Assembly: A Year in Power?*, Institute of Welsh Politics, Aberystwyth, 8 July 2000; Lord Prys Davies, *The National Assembly: A year of laying the Foundations*, lecture to the Law Society at Llanelli National Eisteddfod, 9 August 2000. Both are cited extensively in the Institute of Welsh Affairs quarterly monitoring report, *Devolution Looks Ahead: May to August 2000*, published on the Constitution Unit website [www.ucl.ac.uk/constitution-unit/](http://www.ucl.ac.uk/constitution-unit/).

<sup>6</sup> Ron Davies, *In Search of Attitude*, reported in the *Western Mail* 4 December 2000.

<sup>7</sup> NOP *Wales Monitor* 4, June-July 2000, Table 13 gives breakdown by party affiliation.

The model Wales will appeal to is Scotland. The Scottish Parliament has substantial legislative powers; and the first year legislative programme in Edinburgh shows the Parliament beginning to exercise them to the full. But even in Scotland calls have been made for extra powers. The Scottish opinion polls summarised by John Curtice in the chapter of our book on public attitudes show most Scots disappointed in the performance of their Parliament; and some of them concluding that it needs extra powers to make a real difference to their lives. Similar findings are reported in the State of the Nation poll conducted by ICM in October 2000, when 72% of Scots said they wanted more power to be given to the Scottish Parliament. This sentiment was reflected in some of the end-of-year writing on the performance of the Scottish Parliament in its first year. Thus Professor Lindsay Paterson, writing in *The Scotsman* in August under the headline ‘The majority see the only route to further progress in a stronger Parliament than we have’, concluded his article

“The utopian dreams which always underlaid the whole project for home rule are now turning not into disillusionment but to the demand for a parliament with substantial extra powers.”<sup>8</sup>

It remains to be seen whether, in the second year of devolution, the demand for extra powers picks up any groundswell of support in the Scottish Parliament; and whether it starts to be linked (as it clearly is in Wales) to specific issues where the devolution settlement does not deliver sufficient power. If it is simply an expression of general frustration, then the grant of extra powers may not be the answer; the difficulties may lie more in the internal workings of the Executive or the Parliament than in the extent of their formal powers.

### **The English Question**

England remains the gaping hole in the devolution settlement. It is the space where everything is still to play for. Prof Alan Harding, in his excellent report on the options for regional government in England speaks of the chaos in the middle of English governance, and concludes that the current organisational landscape is unbalanced and unlikely to prove stable.<sup>9</sup> Prof John Mawson, leading our project on business attitudes to the RDAs, has said “present arrangements in England are inherently unstable and will lead to pressures for further change”.<sup>10</sup> Lord Dearing, who conducted the Regional Hearings for the Local Government Association, summed it up by stating that ‘further change in the regional arrangements in England is inevitable’. And John Tomaney (the leader of our monitoring team in England) in his chapter for our book explains the reasons why. The second half of my lecture draws on his and other chapters to explore the English Question.

There are many strands to the English Question. One being explored by a number of researchers is the impact devolution has on national identity. Jack Straw has discerned an increase in Englishness, and this is confirmed in the latest British Social

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<sup>8</sup> *The Scotsman*, 14 August 2000 p 12.

<sup>9</sup> Prof Alan Harding, *Is there a ‘missing middle’ in English Governance?*, New Local Government Network 2000.

<sup>10</sup> John Mawson, ‘Whitehall, Devolution and the English Regions’, background paper for West Midlands Regional Chamber annual conference, Aston Business School, 7 July 2000.

Attitudes survey, based on interviews conducted in summer 1999. The proportion of people who said they were English, not British, had increased from 7% to 17% over the two years since 1997, when devolution was first proposed. But the survey reveals no evidence of resentment in England about power passing to the Scottish Parliament and the Welsh Assembly. On that the English seemed relaxed, to the point of indifference. A quarter of people living in England even thought Scotland should become independent; while more than half would be 'neither pleased nor sorry' at Scottish independence. A fifth wanted independence for Wales; while half (54%) thought Northern Ireland's long term interests would be with the rest of Ireland rather than with Britain.

But these reformist - even revolutionary - views about the rest of the country don't seem to lead to any great appetite for reform within England. Back at home, only 15% of the English favoured regional assemblies for themselves, and only 18% said they wanted an English Parliament. The researchers conclude: "This is probably why the somewhat muted attempts by the Conservative Party to identify itself as the party of English interests have met with an even more muted response".<sup>11</sup>

National identity is but one strand; and not my field of expertise. I want if I may to address the constitutional aspects of the English Question. In constitutional terms the English Question is best approached as a series of questions about English representation in our new quasi-federal system:

- should there be an English Parliament to match the Scottish Parliament and the Welsh and Northern Ireland Assemblies?
- should England instead be divided into eight or so regions, each with its own assembly, which in population terms would come much closer to the size of the devolved assemblies?
- or should Westminster be adapted to give greater voice to English concerns, without going as far as creating a separate English Parliament?

### **An English Parliament?**

The last two options are not mutually exclusive. As I shall explain, I think we are going to see a bit of both. But the first option of a separate English Parliament does not seem to me to be realistic. Those who demand one are in effect demanding a full-blown federation, in which the four historic nations would form the component parts. But there is no successful federation in the world where one of the parts is greater than around one-third of the whole. England with four-fifths of the population would be hugely dominant: even more dominant than Prussia in the old Germany. It would be grotesquely over-balanced, with the English Parliament as important as the Westminster Parliament. Nor would it meet the demands for representation coming from the English regions: to them, an English Parliament looks like another form of London dominance. Nor is there any strong public demand: the Campaign for an English Parliament have attracted no great public following during their weekly vigils waving their St George's flags in Parliament Square.

The Campaign is a political gesture, making a political point as much as it is pressing for the establishment of a new political institution. The point is that with devolution

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<sup>11</sup> See note 4. Curtice and Heath are the source for all the figures in these two paragraphs.

the Scots, the Welsh and the Northern Irish will have a louder political voice, and the English risk losing out. But the answer for the English may lie in adapting Westminster and Whitehall, in some of the ways I will discuss in a moment, and not in a separate English Parliament.

### **Regional assemblies**

The second solution to the English Question might be the creation of a new tier of regional government in England. Regional assemblies are one of Labour's two unfulfilled pledges from their 1997 manifesto, which promised legislation to allow the people of England, region by region, to decide in a referendum whether they want directly elected regional government. John Prescott has been the main standard bearer for this pledge inside government, but he has attracted little support from his Cabinet colleagues, and even less from No 10: so that three years on, the most he has been able to achieve is Regional Development Agencies. But the pledge won't lie down and die: at Labour party conference this year in Brighton the party approved the following policy statement:

“Labour intends, as soon as practicable, to move to directly elected regional government where and when there is a clear demand for it. The way forward will include proposals to:

- request that the existing regional assemblies and chambers, working closely with the regional partners, develop detailed proposals for elected assemblies in their respective regions;
- and/or publish a government Green or White Paper on regional governance.”

Let me mention briefly here that the Constitution Unit is developing detailed models for elected regional assemblies, in a project led by Paul McQuail and Mark Sandford and funded by the Joseph Rowntree Foundation, which should report next April or May. But going back to Labour's policy, I should add that this is not the full text: Labour remains decidedly ambivalent about regional government, and the previous paragraph in the policy statement sets out the reservations of those who are strongly opposed. But the forward momentum continues. John Tomaney's chapter in our book describes how this year has seen the launch of the Campaign for the English Regions, formed by the vanguard regional bodies of the North East, North West, the West Midlands and Yorkshire. The North East is making the running, and in direct imitation of Scotland, three of the regions have established Constitutional Conventions. So far none has got beyond campaigning and wish lists: there is nothing like the detailed planning about powers, functions and composition which went into the work of the Scottish Constitutional Convention. If they are serious they will need to engage with the detail, and rise to Labour's challenge to produce detailed proposals for elected regional government. In the process they may need to throw one or two challenges back: in particular to invite Labour to think hard about the condition that regional government would require a move to a predominantly unitary system of local government, and to specify more clearly when any particular region will be judged ready to hold a referendum. Will this be left to the political and other leaders in the region, or will the government decide when the time is ripe? Will this be a re-run of the referendum on the Euro, where the government's policy has been 'Prepare and Decide': since interpreted by a weary business community as 'We prepare, but you decide'?

The requirement of a predominantly unitary system of local government is a potentially insuperable barrier for regional government. After the last round of local government reorganisation there is absolutely no appetite for more. If the government really wishes to see unitary local government it will have to impose it, as the Conservatives did in Scotland and Wales. Another possible threat to regional government lies in the form of directly elected Mayors. They are not necessarily incompatible, but there is an interesting tension between the two models. For at regional level there may not be room for two political leaders claiming to be the voice of the region, one as leader of the Regional Assembly and the other as the Mayor of the largest city.<sup>12</sup> Which model wins through may depend upon who occupies the political space first.

At present it has to be said that elected mayors look likely to get there first. The enabling provisions are now on the statute book in the Local Government Act 2000, the Government wants to see more, and other cities could opt for elected mayors from May of next year onwards. Regional Assemblies are a long way further back. Elected mayors as the leaders of the biggest local authority in the region may prove to be one more voice that discovers little interest in moving on to a Regional Assembly, once they realize that it would be a countervailing source of power over which they would have less control. Elected mayors may prefer, with encouragement from government, to become the leaders of networks of regional and sub-regional governance in which they would be amongst the biggest players.

### **Westminster as a proxy for an English Parliament**

My third solution to the English Question brings us back here, to Westminster. We have a central chapter in the book on how Westminster is gradually coming to terms with the impact of devolution. The changes so far have been minimalist and piecemeal, with no leadership and no clear sense of Parliament's new role. But in a series of tentative and fumbling steps Westminster is gradually developing its role as a quasi-federal Parliament. This includes operating as a proxy for an English Parliament, within the wider shell of the Union Parliament.

Pre-devolution we had a three-in-one parliament, and it was clear when Westminster was operating as the legislature for Scotland, Wales and Northern Ireland. Post-devolution we are developing a four-in-one parliament, and it will need to become clearer when Westminster is operating in English mode. This is our first attempt to produce a territorial map and start to expose the extent of English business at Westminster, and over the next few years we will try to record more comprehensively how Westminster operates as an English parliament. English business is transacted through the work of the Select Committees; through the new Standing Committee on Regional Affairs (which will be open only to English MPs); through Questions to Ministers on English matters; through Westminster Hall, which provides a further forum for English debates; and through English legislation.

I want to take you through these functions in turn, because so far as I know this is the first time anyone has looked at Westminster through a territorial lens. And I want to adjust the focus as we go through the list, so that sometimes we are looking through a

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<sup>12</sup> Although in countries such as France and Spain they have high profile Mayors co-existing with a regional tier of government.

Scottish lens, sometimes Welsh, sometimes Northern Irish, and sometimes English. Let us start with the scrutiny function and the work of the Select Committees, which are the 15 Commons committees which scrutinise the work of individual government departments. My hypothesis is that over the next few years, there is likely to be greater recognition and formalisation of English business at Westminster through the work of the Select Committees, some of which are already *de facto* English committees. This can be seen partly by their membership, and in part by the subject matter of their enquiries and reports.

### **Select Committees**

Let us first look through the Scottish, Welsh and Northern Irish lens. Three of these committees mark the Scotland Office, Wales Office and Northern Ireland Office respectively. The Scottish and Welsh committees consist mainly of MPs drawn from Scotland and Wales, although the Northern Ireland Committee's membership is nine English MPs, and only four from Northern Ireland. (The reason for that is the convention that committees reflect the party balance in the House as a whole: so the Northern Ireland Committee has seven Labour MPs on it and two Conservatives - all from England). The business of these three Select Committees is exclusively territorial: they enquire into the Scottish, Welsh and Northern Ireland business of the UK government - what is left of it post-devolution. And the Scottish, Welsh and Northern Irish MPs are largely restricted to their own territorial committees. English MPs are far better represented, even in proportionate terms, on the other committees. The chance of an English MP sitting on one of the 12 departmental Select Committees (as opposed to the three territorial committees) is 1 in 4; for a Scottish or Welsh MP 1 in 8; and for a Northern Ireland MP 1 in 20.

***Fig 1 here: reproduce Fig 7.5, with nothing highlighted***

But look at this: if we look through an English lens, we find four committees whose membership consists solely of English MPs. Three of them are on subjects you would expect - Education and Employment, Health, and Home Affairs - matters which are now largely devolved in Scotland, Wales and N Ireland, and in which their MPs no longer have an interest. The fourth is the Treasury Committee, which is a bit of a surprise, because it clearly has UK wide responsibilities. Two other 'domestic' committees which you might expect to consist simply of English MPs post-devolution - Agriculture, and Environment, Transport and Regional Affairs - have three non-English MPs between them.

Look next at the scope of committee enquiries in the session just ended, from November 1999 to June 2000. I should say that this table, like the previous one, is a rough first cut: work in progress to show you our line of enquiry, not to present finished results. And the findings are not that clear cut. We can see clearly the four all-UK committees, Defence, Foreign Affairs, International Development, and the Treasury, whose enquiries all covered all-UK matters. And we can see the Scottish, Welsh and Northern Irish committees, whose enquiries were limited to Scotland, Wales and Northern Ireland. But I am hard pushed to find an exclusively English committee: the only one is Health, which in this period conducted just two enquiries into health services in England. Other committees whose work included a significant

English element are Education and Employment, Environment Transport and the Regions, and Home Affairs.

*Fig 2 here: reproduce Fig 7.6. If awkward it could go before previous para*

That is enough on Select Committees. I want to turn now to territorial committees more generally. For Scotland, Wales and Northern Ireland not only have their Select Committees; each also has a Grand Committee, and occasionally a Standing Committee. The Grand Committees consists of all the MPs for the territory, so the Scottish Grand has 72 members, the Welsh Grand 40 (plus two English MPs) and the Northern Ireland Grand 40 members (the 18 MPs from Northern Ireland, plus 22 from Great Britain). The Grand Committees do not have significant powers, and when under the last government John Major was trying to talk them up as an alternative to devolution, the Labour opposition was inclined to dismiss them as talking shops. They provide an additional forum for the opposition to question the government and hold short debates, but the Procedure Committee has recommended that post-devolution they should be abolished.

#### **A new Forum for English MPs: the Standing Committee on Regional Affairs**

Up to now there has been no English equivalent to the territorial Grand Committees; but last year Margaret Beckett proposed establishing a new English committee, by reviving the Standing Committee on Regional Affairs. This was a revival of a committee which was created in 1975 and last sat in 1978. The Modernisation Committee expressed little enthusiasm for the proposal, and it began to appear that the matter had been dropped. However, in April 2000, Margaret Beckett returned to the charge, inviting the House to update the relevant Standing Order 117 and revive the committee; and against opposition from the Conservatives and Liberal Democrats, the House gave its approval.

The reformulated committee would be charged with considering 'any matter relating to regional affairs in England which may be referred to it'. Unlike the old committee, which was open to all English members and thus potentially difficult for government to control, it would have 13 core members from English constituencies, whose party balance would reflect that of the whole house, rather than English members. Any other member representing an English constituency would be entitled to take part in proceedings, but not to propose motions or vote. (Note here, in connection with the debate about two classes of member, that this committee creates two classes: it is an English club, and Scottish, Welsh and Northern Irish members are not able to take part in its proceedings).

It is not at this stage a big or powerful club. Its agenda would be dominated by the Government and not by its members, putting it in a weaker position than the territorial Grand Committees. The Conservatives were dismissive of the proposals, considering them no substitute for separate treatment of English legislation.

The Liberal Democrats proposed amendments to the new standing order which would have increased the membership of the committee to 24, and required its party balance to reflect representation in England, rather than the whole UK. Note the issue of the composition rule, which I shall come back to: should the composition of these

territorial committees reflect the party balance in the House as a whole, or in the territory concerned? The Liberal Democrat proposal was supported by the Conservatives but defeated by the government.

Listening to the criticisms levelled during the debate, Margaret Beckett indicated that the committee could expand its role if pressure for English forums at Westminster grows. Perhaps I could mention here that we are conducting a survey of MPs, asking what has changed as a result of devolution. One of the early findings is that they think there should be fewer forums to discuss Scottish and Welsh issues, and more forums to discuss English issues, and the English regions. But at this stage it has been a struggle for Margaret Beckett to bring the new committee into being at all. It is now eight months since she introduced the changes to Standing Orders. A month ago I asked her when the committee would be established, and she said before the end of the session - the one that has just ended. Perhaps if she had been a bit bolder about the role and powers of the committee she might have found the opposition more cooperative, and more English members willing to serve.

### **An alternative Forum: Westminster Hall**

Another possible forum for English debates is the new experimental chamber in the Grand Committee Room off Westminster Hall: an experiment which the House has recently decided to continue. In its first year this forum has debated some regional matters, and I had thought that Westminster Hall might become another *de facto* English part of the Westminster system; but the first year figures suggest not. Of the 337 debates held in Westminster Hall in 1999-2000, only a quarter were on English matters, and many of these were driven more by members' individual constituency interests than anything else.

### **'English votes on English laws'**

So far I have talked only of the scrutiny function, and described three different fora - Select Committees, the new Standing Committee on Regional Affairs, and Westminster Hall - as offering machinery through which Westminster can start to operate as an English Parliament. The government has conceded the need for a specifically English forum, although its opening offer is about as small as you can get. But scrutiny is one function; legislation is another, and one played for much higher political stakes. Here the government is reluctant to concede anything which might limit the voting rights of non-English MPs over English laws: the famous West Lothian Question. Tam Dalyell, the originator of the question, exercises a self-denying ordinance by not voting on English and Welsh legislation; and William Hague has said that he would change Standing Orders to prevent Scottish MPs like Tam voting on English or English and Welsh laws.

The West Lothian Question - or the English Question, as I prefer to call it - goes back a very long way. Gladstone wrestled with it during the debates on Irish Home Rule, and his 1893 Government of Ireland bill proposed the same solution as Hague. In Gladstone's time it was dubbed the In and Out rule - Irish members would be in for some business, excluded from others. The second important initial point to make is that although we now associate 'English votes on English laws' with the Conservatives, they are not alone in raising the issue. It first surfaced in recent times

with all-party support, in the report last year from the Procedure Committee: a committee with nine Labour, three Conservative and two Liberal Democrat members.

### **The Procedure Committee and the Norton Commission**

I don't want to delve too deeply into the legislative process, so I have tried to summarise it in Figure 3. The first row shows the normal process, with the four stages a bill passes through in the House of Commons. The second row shows the special procedure that used to be followed for Scottish bills before devolution. In their May 1999 report on *The Procedural Consequences of Devolution*, the Committee proposed a new procedure for territorial legislation, based on the special provision for Scottish bills. This would have enabled the Speaker to identify, for the first time, Bills relating exclusively to England, or England and Wales. The committee then went on to propose a new process for any Bills so identified. Under these arrangements, shown in the third row in Figure 3, such Bills could start their Commons passage by being referred to a Second Reading Committee, made up entirely of members of the territory concerned. The remaining three stages would take place as normal. I would call this proposal 'quarter strength' English procedure.

**Figure 3: Special procedures for territorial legislation**

	<b>Second Reading</b>	<b>Committee Stage</b>	<b>Report</b>	<b>Third Reading</b>
<b>Ordinary bill procedure</b>	Chamber	Standing Committee	Chamber	Chamber
<b>Scottish Bills pre-devolution</b>	Scottish Grand Committee	Scottish Standing Committee	Chamber	Chamber
<b>Procedure Committee May 1999 (English bills)</b>	Second Reading Committee of 35 English MPs	Standing Committee (with minimum of 16 English MPs)	Chamber	Chamber
<b>Norton Commission July 2000 (English bills)</b>	English Grand Committee (539 English MPs) meeting in the chamber	Special Standing Committee restricted to English MPs	English Grand Committee	Chamber (with convention that only English MPs vote)

The Government was dismissive of the Committee's proposal, stating that '[i]f...it were possible to identify some Bills as relating exclusively to England, it is not clear what benefit this would have for the House'. The Conservatives were supportive, and the Conservative Party has since developed the idea further, in the Commission to Strengthen Parliament, established by Hague under the chairmanship of Lord Norton of Louth, which reported in July 2000. The Norton Commission proposed that territorial Bills would be referred to a Bill Grand Committee, comprising all members from the territory concerned; with the committee stage taken in a special standing committee, also restricted to members from the territory; and report stage back in the Grand Committee. We can call Norton a 'three quarter strength' English procedure.

Just to illustrate again that this is not just a Conservative issue, the only legislative initiative to achieve this goal has been made by a Labour MP. On 28 June 2000, the English backbencher and former Minister Frank Field introduced the House of Commons (Reserved Matters) Bill, under the 10 minute rule. This Bill would have barred by law Scottish or Northern Irish members of parliament from speaking or voting, except on matters reserved to the Westminster Parliament. It would also have precluded such members from becoming UK ministers, except in posts relating to reserved matters. Frank Field acknowledged that his bill had no hope of becoming law, but said his main purpose was to raise the issue and start a debate. (The bill was defeated by 190 votes to 131).

**Lord Irvine ducks the issue**

On his own side sadly there has been no debate: Labour’s head is stuck firmly in the sand on all this. The government denies that devolution has any significant consequences for Westminster. Its 3-page memorandum to the Procedure Committee was as minimal as you can get. Lord Irvine has famously said that the best way to answer the West Lothian Question is to stop asking it: which led William Hague to retort that the best way to find an answer to the question might be to stop asking Lord Irvine.

**Is there such a thing as an English law?**

Part of the government’s denial is based on a denial that there is such a thing as an English law. Technically they are right, but only in the limited sense that there is as yet no statute which extends to England only. Parts of some statutes do, and many statutory instruments: there is certainly a body of law that applies only to England, even if there is no single English law. To give you an idea of how Parliament legislates for the different parts of the kingdom, the territorial breakdown of the 39 statutes passed in the 1999-2000 session just ended is as follows:

**Figure 4: Territorial extent of public Acts passed in 1999-2000**

UK	24
Great Britain	3
Scotland	0
Northern Ireland	2
England and Wales	10
England	0
<b>Total</b>	<b>39</b>

Note the number of laws which apply to England and Wales: a quarter of the total. Strictly Hague should amend his rallying cry to English and Welsh votes on English and Wales laws, which doesn’t have quite the same ring. But in time he will have some English laws to bite on. Look at this, the territorial extent clause of the Children’s Rights Commissioner Bill:

“18. (1) This Act may be cited as the Children’s Rights Commissioner Act 2000.

(2) This Act extends only to England”.

I got very excited when we found this, but it turned out to be a Private Member’s Bill which didn’t get passed, inspired by devolution. Wales now has a Children’s Rights Commissioner, and the sponsor of this bill wanted England to follow suit. But I do believe it is a harbinger of things to come. English laws will come, not through popular demand, but simply as a by-product of devolution: as the residuum which Westminster is left with once much of Westminster’s law making is devolved to Scotland, Wales and Northern Ireland. At the moment the residuum are the laws for England and Wales, because both Scotland and Northern Ireland have law making power. If you accept my earlier conclusion in relation to Wales, that legislative devolution there is only a matter of time, then in time Westminster will be left making a significant number of laws which apply only to England.

### **Hague raises the stakes**

The question then arises, who should vote on those laws? Last month, at a speech in Oxford, Hague raised the stakes by saying

“A change as fundamental as this could not be introduced half-way through a Parliament. So I can tell you today that English votes on English laws will be one of my first priorities. In the opening days of the next Conservative Government there will be a change to the procedures of the House of Commons. We will make English votes on English laws a reality”.<sup>13</sup>

There is of course a very sharp party political angle to all this, because the Conservatives have derived much of their parliamentary strength from English seats, and Labour from its seats in Scotland and Wales. It is in part the fear of being outvoted by a future Conservative majority in England which leads Labour to deny there is an issue here, and to stick their heads in the sand.

But they may be unduly fearful, because the parliamentary arithmetic is probably not as unfavourable as they suppose. It is true that the Labour governments of 1950, 1964 and 1974 did not have a majority of seats in England, so that they relied for their overall majority upon their seats in Scotland and Wales. But so long as the Welsh Assembly does not have legislative power, the crucial concern for Labour at Westminster is their majority in England and Wales: and in 1950, 1964 and 1974 they started the Parliament with a majority in England and Wales. [I should add that all these figures are for the beginning of each Parliament: the majority may have eroded during the course of the Parliament]. It is only 5 or 10 years hence, when the Welsh Assembly has legislative power, that Labour needs to be concerned about its majority in England.

### ***Figure 5 - Roger’s bar chart - to go here***

What can the electoral experts tell us about the likelihood of Labour not having a majority, first in England and Wales, and then in England only? The answer is that Labour’s overall majority would have to be very small indeed before they get into

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<sup>13</sup> ‘A Conservative View of Constitutional Change’, speech at Magdalen College, Oxford, 13 November 2000.

West Lothian territory: as it was in 1950, 1964 and 1974, when their overall majority was 2, 1 and 1 respectively. If we assume that Labour's share of the vote shrank by 7 per cent and the Conservative share rose by 7 per cent, and everything else remained the same, then Labour might not have a majority in England and Wales: but their overall majority would then shrink to half a dozen seats or less. And if we assume a 6 per cent swing from Labour to Conservative, then Labour might not have a majority in England; but their overall majority would be little more than a dozen. I haven't been able to get odds from the bookies on a majority of this size, but they must be pretty long. So in terms of parliamentary majorities Labour may not have to confront the West Lothian Question just yet. And from 2005 onwards, there will be a dozen fewer Scottish MPs, making the probability smaller still.

### **Changing the composition rule for territorial committees**

We don't have the details of how Hague would implement English votes on English laws, but I am told that he would build on the Norton Commission proposals: and possibly prohibit non-English MPs from voting at Third Reading as well. We can call that a full strength English procedure. To work it would require two fundamental changes in our parliamentary system. The first, which was part of the Procedure Committee as well as the Norton proposals, would be a change to the composition rule for territorial committees. Instead of being a microcosm of the House as a whole, territorial committees would be a microcosm of the territory concerned: and would reflect the party balance in that territory. So the Conservatives might have a majority on the English Grand and English Standing Committee, while a Labour government had a majority in the House as a whole. (To give you an alternative perspective you can play the change out in retrospect: had this composition rule been in force during the Thatcher and Major years, they would have faced Labour-controlled Scottish and Welsh Grand Committees, and Scottish and Welsh Standing Committees, and would have had to moderate some of their policies in Scotland and Wales accordingly). The Whips would be utterly opposed to such a change: it is for them an iron rule that any committee with any semblance of power must reflect the party balance in the House as a whole.

The second change which would be required is one of political culture. It is an accepted feature of the Westminster system that the government must get its legislation: we have seen that played out yet again at the end of the last session. Under the arrangements I have been describing the government would not always get its bill: especially if it was an English bill, and the government didn't have a majority in England. In an exchange with Vernon Bogdanor in the *Financial Times* recently Douglas Hurd suggested

“There would be no need for the government crisis that Vernon Bogdanor fears. The government of the United Kingdom would have to ensure that its English measures were acceptable to enough English MPs - or else not put them forward. There would be nothing extraordinary in this process: it is called politics”.<sup>14</sup>

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<sup>14</sup> *Financial Times*, 24 November 2000.

But it would be extraordinary: it would require a completely different attitude by government towards the passage of government legislation. Perhaps that will come, as UK governments become more relaxed about the devolved parliaments passing legislation which they dislike: but it is one thing to have Edinburgh cock a snook at you - it is another for the snook to be cocked right under your nose, and by a parliament representing 85% of the UK's population.

### **A Parliament within a Parliament**

I said 'a parliament' not wholly by accident. For the last thing I want to suggest about William Hague's proposal is that it is not quite as deceptively simple as Douglas Hurd implies. Implemented to the full, by what I have dubbed a 'full strength' English procedure, it amounts to devolution for England: because what Hague is effectively proposing is an English Parliament within the Westminster Parliament. That is a huge change, which deserves as much discussion and proper deliberation as the proposals on devolution for Scotland. But Hague, if we are to believe his Oxford speech, would make the change 'in the opening days of the next Conservative Government'.

I think Hague is right to be raising the issue of English votes on English laws: but wrong to be proposing such a major change so swiftly after the next election. As I have explained, Westminster is beginning to develop the capacity to debate English matters; but that process needs to develop organically and gradually, and should not be rushed. I foresee a gradual process of evolution at Westminster, in which some of the Select Committees in future years become more distinctively English; while other English fora may develop, like the new Standing Committee on Regional Affairs. And I foresee a gradual process on the legislative side as well, starting with a quarter strength or half strength English procedure, and seeing how that works, before building up to the full strength process proposed by Hague. Let us not forget that in Scotland the Scottish Constitutional Convention had eight years to develop their proposals for the Scottish Parliament. Then those proposals were put to referendum. In England there needs to be an equally wide process of deliberation and consultation: the English deserve no less.

### **Finding answers to the English Question**

I know there are other dimensions to the English Question which I have not even touched upon: issues of national identity, public attitudes, culture and history, to say nothing of warm beer and old maids biking to holy communion through the mist ... I hope you will forgive me for dwelling so much on the English Question and Westminster. And please don't misunderstand me: I am not suggesting that all the answers are to be found here in Westminster. What I think is more likely to happen is a parallel development of stronger forms of regional government in England, together with the gradual evolution of English structures at Westminster. I have focused on the Westminster end because I felt I had something new to say; because devolution and Westminster is something the Constitution Unit is starting to do work on, where we would welcome help and ideas; and because it is a live political issue which badly needs to be underpinned by some analysis and research. (Including comparative research; in Denmark they have an emerging West Lothian Question in relation to the Faeroes; in Norway they compensate for the absence of a second chamber by operating a 'parliament within a parliament'; etc). This project is just one example of

the kind of policy-oriented research which runs through the whole of our research programme into the dynamics of devolution which the Leverhulme Trust have so generously funded.

Donald Dewar said he counted himself lucky indeed to be playing his part in turning vision into reality and building a workable constitutional settlement. We who observe and report on these developments should count ourselves equally lucky. We have an extraordinary opportunity in these two research programmes, funded by Leverhulme and the ESRC, to inform and to guide the development of policy as the devolution settlement unfolds. It is not just an opportunity; as Donald might have said, it is a duty. We will never in our lifetimes see again constitutional changes of the kind which are now unfolding before our eyes. The Union and its component nations are being reshaped in ways which none of us can fully understand or foretell. But we academics should be able to understand better than most; and without pretending to perfect wisdom or perfect knowledge, we should do our best not just to analyse and record, but to map out and to chart the way ahead.

