

Devolution and the Centre – Monitoring Report No 1 (November 2000)

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1. *Devolution and Westminster*

The New Scottish Speaker:

Prior to the election of Michael Martin to the position of Speaker of the House of Commons reports suggested that groups of English MPs were attempting to block the election of the Scot, who by August had emerged as the favourite candidate to succeed Betty Boothroyd. English MPs were dissatisfied at the level of influence that would be gained by Scotland in the House of Commons were Mr Martin to be elected to the post and began discussing ways in which to promote English candidates. One MP was quoted as commenting:

There are enough Scots in the Cabinet. Having one as Speaker will only accentuate tensions.¹

Opposition to having a Scottish Speaker was also reflected in the correspondence columns of *The Times* and *The Daily Telegraph*.² Following the failure of the Commons to reform the procedure for the election of a new speaker Peter Riddell of *The Times* also commented on the procedures used by the devolved Parliament at Holyrood and the Assembly in Cardiff:

Typically, no one mentioned that the Scottish Parliament and Welsh Assembly have a more transparent and fairer system for electing their presiding officers by eliminating ballots. But then Westminster is never keen to learn from other Parliaments.³

The English Question:

The debate over the English Question continues both in and out of the Commons. However, the issue of questions unrelated to reserved matters was swiftly dealt with by the new Speaker:

Mr Andrew Rowe (Faversham and Mid-Kent): On a point of order, Mr. Speaker. I raise with you an issue about which I have given you notice. In the debate on Monday that secured your elevation to the Chair, it was repeatedly affirmed that Members are all equal in their rights, responsibilities and privileges. As far as I can tell, I, as an English Member, cannot ask in this place a question about the governance of the national health service in Scotland yet, yesterday, a Scottish Member asked a question about the national health service in England and Wales. Is it in order for a Scottish Member to be able to exercise a privilege that is denied to Member from south of the border?

Mr Speaker: I am grateful to the hon. Gentleman for giving me notice of his point of order. He makes an interesting debating point, but it is not really a point of order. Parliament legislated for a Scottish Parliament in 1998 and there were opportunities to debate those issues then. I also remind the hon. Gentleman and the House that it was only last year that the House debated

¹ 'English MPs to oppose Scot as new Speaker,' *The Daily Telegraph*, 24 August 2000.

² The three leading letters the day after the election of the new Speaker all addressed this issue, 24 October 2000.

³ 'An abuse of democracy results in the wrong victor,' *The Times*, 24 October 2000.

and approved the recommendations of the Procedure Committee on the procedural consequences of devolution.⁴

Nevertheless, the English Question remains high on the agenda of the opposition with William Hague outlining the action that would be taken by an incoming Conservative government in a speech given at Magdalen College, Oxford, on 13 November.⁵ In addition to reducing the number of Scottish MPs at Westminster from 72 to 58, an act already promised by the Labour administration and required by the Scotland Act 1998, Mr Hague stated that one of his first acts as Prime Minister would be to prevent Scottish MPs from voting on matters dealt with in the Scottish Parliament by MSPs. All MPs at Westminster would remain able to vote on matters of UK-wide application such as taxation, defence, social security and foreign policy. Quoted in *The Times* the Labour response accused Mr Hague of attempting to create an “English Nationalism bandwagon”, while Alistair Morgan of the Scottish National Party denounced Mr Hague’s speech as “typical Tory anti-Scottishness.”⁶

The debate over the English Question also raises the issue of two classes of MP at Westminster. Westminster remains the Parliament of the United Kingdom and to prevent MPs from debating and voting on matters within the Commons would create a clear divide between MPs. The Conservative response to this is that the divide already exists, having been created by devolution to Scotland, Wales and Northern Ireland.

⁴ HC Deb, 25 October 2000, Col 220. The relevant recommendation of the Procedure Committee (HC 185) was worded as follows:

- "Subject always to the discretion of the Chair, and in addition to the established rules of order on the form and content of questions, questions may not be tabled on matters for which responsibility has been devolved by legislation to the Scottish Parliament, the Northern Ireland Assembly or the Welsh Assembly unless the question—
- (a) seeks information which the UK Government is empowered to require of the devolved executive, or
 - (b) relates to matters which —
 - (i) are included in legislative proposals introduced or to be introduced in the UK Parliament,
 - (ii) are subject to a concordat or other instrument of liaison between the UK Government and the devolved executive, or
 - (iii) UK Government ministers have taken an official interest in, or
 - (c) presses for action by UK ministers in areas in which they retain administrative powers".

⁵ www.conservatives.com/speeches_list.cfm

⁶ ‘Scots MPs would lose vote under the Tories,’ *The Times*, 14 November 2000.

The Government stated in April that the Standing Committee on Regional Affairs will be resurrected⁷ – Margaret Beckett has said that the revived committee will be in place before the end of the 2000-2001 session.⁸

The Disqualifications Bill:

The Disqualifications Bill was revived after lying dormant for six months, and had its Second Reading in the Lords on 28 July, the day before the summer recess. The Government claimed it was a modest bill, removing the last major inconsistency in the way UK electoral law applies to Commonwealth and Irish citizens. The bill will allow members of the Irish parliament to serve as members of the House of Commons. Peers objected that the bill was being rushed through as a sop to Sinn Fein: while it was permissible to hold a dual mandate between Westminster and a devolved legislature or the European Parliament, it was wrong to allow dual membership in two sovereign Parliaments.

When next heard in the House of Lords on 20 November the Conservatives lodged a wrecking amendment to delete the first clause of the disqualifications bill which was passed by 165 votes to 152. The Conservative Lord Cope of Berkeley described the bill as ‘sinister’ and went on to say:

We will not acquiesce in the weakening of our Parliament by stealth and we will not accept the undermining of the United Kingdom by stealth.⁹

This was the first time the Government had been defeated in Parliament over matters relating to the Northern Ireland peace process, despite Labour claims that the bill was a part of the commitments made under the Good Friday Agreement. The Labour Minister Lord Falconer of Thoroton warned against the undermining of the bi-partisan approach to matters relating to the peace process by the Conservatives.

Reports initially suggested that the defeat would immediately be overturned in the Commons but have since indicated that the Government will abandon the controversial bill.¹⁰

The Scottish, Welsh and Northern Ireland Committees:

The Welsh Affairs Select Committee took evidence from Rhodri Morgan on 30 October in Cardiff, discussing both devolution in practice and the role of the UK government in promoting Wales abroad. Further evidence is scheduled to be heard on 21 November at the House of Commons where Paul Murphy will be commenting on the outcome of the Comprehensive Spending Review.

⁷ HC Deb, 11 April 2000, Col. 289.

⁸ In response to a question at a Hansard Society Democracy Forum, Westminster, 14 November 2000.

⁹ ‘Peers halt Stormont plan for Irish MPs,’ *The Independent*, 21 November 2000.

¹⁰ ‘Ireland Bill may have to be ditched,’ *The Times*, 22 November 2000; ‘Ministers may sacrifice bill to aid Trimble,’ *The Guardian*, 22 November 2000; ‘Labour to accept defeat over Bill on Irish MPs,’ *The Independent*, 22 November 2000.

The Scottish Affairs Select Committee announced that during November evidence would be taken on the subject of the Drinks Industry in Scotland. Two dates were set with evidence to be taken on 8 November from the British Soft Drinks Association, Campsie Springs Scotland Ltd, Gleneagles Spring Water, Highland Spring Water, and Lovat Pride (Mineral Water), and on the 15 November from The Scotch Whisky Association.

The Northern Ireland Affairs Select Committee announced evidence would be heard on the 25 October, 1 November and 8 November on the Review of the Northern Ireland Prison Service. It was also announced that further evidence would be taken on the review of the Parades Commission on the 15, 21 and 25 November.

The transcripts of these meetings have not yet been published but will in due course be detailed on the Parliamentary Select Committees website at <http://www.parliament.uk/commons/selcom/cmsel.htm>

At the time of writing the Welsh, Scottish and Northern Ireland Grand Committees had not met since the Westminster summer recess.

2. Devolution and Whitehall

Scotland:

John Reid and Gordon Brown came under fire from the convenor of the Scottish Parliament's European Committee, Hugh Henry, who accused them of providing documents inadequate for the Committee's use. The documents in question were written submissions made to the Committee after the two UK ministers refused to appear before the Scottish Parliament's Committee whilst it was collecting evidence on EU funding in Scotland.

Wales:

The series of concordats between the UK Government and National Assembly for Wales is almost complete: documents agreed with the Department for Culture, Media and Sport and the Health and Safety Executive were published in June and October respectively.

The Secretary of State for Wales, Paul Murphy MP, addressed the Regional Government and Devolution Conference in Valencia on 31 October. The speech outlined the links between Wales and the region of Catalunya in Spain

and highlighted the lessons that Wales has learnt from the region, in particular the importance of unity running in parallel with devolved powers:

You have preserved the fundamental unity of the Spanish state – proving that decentralisation does not necessarily and inevitably lead to what we in Britain call the ‘slippery slope to separation’.¹¹

Northern Ireland:

After agreement was reached with the Northern Ireland Executive over the Memorandum of Understanding and its supplementary agreements in June the process of agreeing concordats between the Executive and Whitehall Departments has begun.

3. *Devolution and the Courts*

Montgomery and Coulter v Her Majesty’s Advocate:

The first case to be heard by the Privy Council as a devolution issue was argued in July 2000.¹² Although judgment has been handed down a gagging order prevents its contents from being revealed as the case deals with issues that are the subject of ongoing litigation in Scotland.

Brown v Stott:

The second appeal heard by the Judicial Committee thus far has been in the well publicised case of Margaret Brown. The case arose under the Road traffic Act 1988 s.172(2)(a). Ms Brown was suspected of driving under the influence of alcohol and under the Act was required to identify the driver of the car at the time of the incident. Her admission was the primary basis for a conviction of drink driving under the Act. The conviction was appealed against on the basis that the requirement that the driver of the car be identified infringed the right to silence and the right against self-incrimination inherent in Article 6(1) of the European Convention on Human Rights. The High Court of Justiciary, comprising Lord Rodger, Lord Allanbridge and Lord Marnoch, allowed the appeal declaring statements made under s.172(2)(a) inadmissible as they coerced self-incrimination.¹³

The appeal under the Scotland Act was heard in the second week of November and may have far reaching consequences, not only as a marker for the way in which the courts will address issues under the Human Rights Act, but also for the continued application across the UK of the Road Traffic Act.

¹¹ Press Release, *Speech by the Secretary of State for Wales, Paul Murphy, to the Regional Government and Devolution Conference in Valencia*, Wales Office, 31 October 2000.

¹² *David Shields Montgomery and Andrew Alexander Marshall Coulter v Her Majesty’s Advocate and the Advocate General for Scotland* (as yet unreported).

¹³ *Brown v Stott* [2000] SLT 379.

However, the Lord Chancellor has suggested that in certain cases the Executive could ignore a ruling that an Act of Parliament was incompatible with the standards enacted under the Human Rights Act and refuse to amend the law in question. The Lord Chancellor stated:

I can envisage that in one or two cases they would take the view that there was some overriding reason that they would not want to make it [the law] compliant.¹⁴

Although Lord Irvine made no specific reference to a case in which this may happen the press immediately raised the issue of mandatory life sentences (in particular that of Myra Hindley).¹⁵ Nevertheless the case of *Brown v Stott* had an effect south of the border even before the Human Rights Act came into force on 2 October with the judgment being followed in Birmingham Crown Court by Judge Peter Crawford in July.¹⁶

Hoekstra v Her Majesty's Advocate:

An application for special leave to appeal to the Judicial Committee was heard in the Case of *Hoekstra v Her Majesty's Advocate* during October but was dismissed by Lords Slynn, Hope and Clyde on the basis that the case did not raise a 'devolution issue' as defined by Schedule 6 of the Scotland Act 1998.¹⁷ The failure of the petition will serve as a reminder of the scope of the jurisdiction of the Judicial Committee under the devolution legislation:

...it is plain that the Judicial Committee can only act within the limits which have been set for it by the statute. An appeal can only be brought or a reference made, to the Judicial Committee under Schedule 6 of the Scotland Act 1998 if it raises a devolution issue...but it does not follow that all issues which are of a constitutional nature are devolution issues within the meaning which is given to the expression by [paragraph 1 of schedule 6].¹⁸

4. Intergovernmental Relations

The Joint Ministerial Committee on Devolution:

In the political sphere of intergovernmental relations 1 September 2000 saw the first plenary meeting of the Joint Ministerial Committee on Devolution (JMC), and the first meeting of the JMC convened largely at the request of the devolved governments. The meeting, held in Edinburgh, was attended by the Prime Minister and all the First Ministers and their deputies, and is intended to set a precedent for an annual evaluation of the devolution process. The

¹⁴ Ministers may defy rights Act over Hindley, *The Times*, 21 September 2000.

¹⁵ *Ibid.*

¹⁶ Ruling exposes loophole for drivers, *The Guardian*, 15 July 2000.

¹⁷ *Lieuwe Hoekstra, Jan Van Rijs, Ronny Van Rijs, and Hendrick Van Rijs v Her Majesty's Advocate*, Petition for Special Leave to Appeal heard 2 October 2000, reasons given 26 October 2000 – for judgment see the Judicial Committee's website. Also see 'Privy Council does not review Scots court', *The Times*, 31 October 2000.

¹⁸ *Ibid.*, at page 6.

Memorandum of Understanding emphasises that the Joint Ministerial Committee on Devolution is at the summit of the political machinery for intergovernmental relations, and sets out its terms of reference as follows:

- To consider common issues of concern across all devolved areas;
- To keep the arrangements for liaison under review; and
- To consider disputes between the administrations.

The six meetings of the JMC in 2000 have dealt with health, the knowledge economy and poverty and provided Tony Blair and Gordon Brown with a platform from which to promote their own agenda. Disputes between the devolved administrations, it seems, have not figured highly. Indeed after the first plenary meeting of the JMC it was reported that throughout the year 'differences of view had been settled "amicably."¹⁹ Testament perhaps to the emphasis that has been placed on the continuation of intergovernmental relations on a less formal scale, between officials and bilaterally between ministers.

The first annual Joint Ministerial summit assessed the achievements of each of the devolved administrations and noted that at the centre the UK government had passed legislation to modernise local government and had established the GLA. The work of the Regional Development Agencies was also noted. Human Rights and the Memorandum of Understanding were also discussed and, while it was agreed that the current arrangements were working well, three action points were agreed and were summarised as follows in the press release issued by the Northern Ireland executive:

- They instituted formal **stock-takes of the Memorandum of Understanding** between the administrations, and the **bilateral agreements** on working relations between UK Government Departments and the devolved administrations. This will be to ensure that the detailed arrangements for joint working remain robust.
- The Committee recognised the importance of management of the relationship between the respective UK and devolved **legislative programmes**. Much had gone right; however increased effort is needed to ensure that legitimate interest in each other's programmes is fully built into the process of preparing legislation, not treated as an optional extra. To that end, the meeting stressed the importance of early sharing of information between administrations and consultation on policy options and common interests as envisaged in the Memorandum of Understanding, so that any problems are identified and addressed as early as possible.
- More generally, the Committee recognised that formal agreements, while important, can only do so much. They recognised the importance of **continuing informal dialogue** between Ministers and officials to promote common understanding and strengthen the relationship between administrations. This is vital so that particular issues can be handled in the context of better understanding of each other's position and objectives

¹⁹ 'Blair says devolution made Britain stronger', *The Times*, 2 September 2000.

through the development of a positive relationship, capable of handling specific differences.²⁰

The British-Irish Intergovernmental Bodies:

The British-Irish Council and the British-Irish Intergovernmental Conference, established under the Belfast Agreement held inaugural meetings in December 1999. The suspension of the devolved institutions in Northern Ireland prevented further meetings of the British-Irish Council throughout the year. A meeting was scheduled to take place in Dublin on 31 October but was cancelled due to the untimely death of the Scottish First Minister, Donald Dewar. However, the inclusive nature of the devolution settlement does not extend across the spectrum as the two Democratic Unionist members of the Northern Ireland Executive continue to boycott the institutions set up under the Belfast Agreement.

²⁰ Press Release, *Trimble and Durkan Review Impact of Devolved Government*, Northern Ireland Executive, 1 September 2000.