

Westminster and the English Question

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Preface

When the history of the new Labour governments comes to be written, constitutional reform is likely to be regarded as one of the big success stories. New Labour has undoubtedly presided over one of Britain's most radical periods of constitutional reform, which has transformed much of the political landscape. Yet, paradoxically, constitutional reform has never been a major priority, especially when compared with the politically charged realm of the public services, and the government rarely seems to champion its record. But modesty in itself is not a problem. Instead, problems arise in thinking that constitutional reform is a static event, and that once implemented it is safe to walk away. In fact constitutional reform is emphatically not static, but is a dynamic process. It unleashes powerful forces that create new challenges and tensions, with both anticipated and unanticipated consequences.

Devolution – perhaps the most significant piece of constitutional reform – is a case in point. Famous for its smooth and relatively painless implementation, it has nevertheless created new anomalies. Chief among these is the position of England in a post-devolved UK. Without its own political institutions, England continues to be governed by Westminster in much the same way as it was before. Viewed from the House of Commons, it might be said that devolution appears to be more of an event than a process.

But the formidable challenges that devolution has thrown up for the way in which England is governed are not going to go away. Indeed, they are set to become more pressing given the new political context of 2005. In the 2001 parliament – to the surprise of many – the notorious post-devolution anomaly the West Lothian Question became a live political issue, with the votes of non-English MPs proving decisive in passing highly controversial legislation that only applied to England, on foundation hospitals and tuition fees. This was unanticipated given the size of Labour's majority. Now, however, that majority is much reduced. Furthermore, although the government still has a majority of 43 amongst English MPs, the Conservatives can boast of having attracted more votes from the English electorate than Labour in May 2005. Now the government are committed to increasing the pace of their ambitious public service reform agenda, on which there is much talk of possible Commons defeats. But even if the legislation passes it seems likely that controversy will follow, through the reappearance of the West Lothian Question – given that much of it will be restricted in its application to England, or at most England and Wales. The new electoral arithmetic dictates that the government will increasingly rely on the support of their Welsh and Scottish MPs – for example over plans for education reform and reform of local government finance. Combined with renewed media interest, and a hostile opposition, this could create the momentum needed to make this a much more significant political issue in the third term. Meanwhile, elected regional government for England, which some touted as a (partial) solution to the constitutional riddle now looks dead and buried for the foreseeable future.

The debate sparked by the foundation hospital and tuition fee incidents at Westminster, and within sections of the press, brought the arrangements for the government of England under a new kind of scrutiny post-devolution. Disraeli's quip that England is governed by Parliament not logic came under increasing pressure as logical answers were sought. The Conservative Party, in particular, denounced the situation and called for a policy of 'English votes on English laws'. The government refused to be drawn on the issue, insisting that they would not countenance two classes of MP, which such a policy would bring.

This briefing seeks to investigate and unpack these difficult issues. Taking a partly historical perspective it demonstrates that the current debate in fact contains little new. A closer reading of history shows that such territorial anomalies, and arguments about them, have long existed. But these arguments have tended to be driven largely by concern for political expediency, rather than some deep-seated commitment to constitutional principle. History also shows that resolving such anomalies is much harder than people think. It was Gladstone who first proposed the 'in and out' policy which has since been repackaged by the Conservatives. But he ultimately dropped it, concluding that it was unworkable. Here we survey this and other solutions that have been proposed over time and demonstrate that, more often than not, such proposals come with profound and far-reaching implications of their own.

This briefing is an adapted version of a chapter to appear in the forthcoming book edited by Robert Hazell, entitled *The English Question* (Manchester University Press, 2006). We are grateful to Manchester University Press for permitting us to publish it in this form, and to the other contributors to the book for their comments on earlier versions. We are also grateful to the Leverhulme Trust for their funding of the project 'The Impact of Devolution on Westminster', which enabled us to conduct the research.

We hope that the briefing proves timely, and helps shed some light on the rather fraught and complex issue which it seeks to deconstruct.

Executive Summary

- Since devolution in 1999 much attention has focussed on its impact on the Westminster parliament. This briefing seeks to explore the issues, by analysing contemporary data and also taking a historical perspective on the 'West Lothian Question'.
- There has in fact been little change in procedure or behaviour at Westminster since devolution. Territorial forums for Scotland and Wales continue to exist as before. There is some sign that Scottish and Welsh MPs are less well represented in the business of departments dealing with largely English affairs – as ministers, on select committees and in asking parliamentary questions (Tables 1, 2 and 3). However, this was largely the case already, before 1999.
- The issue that has attracted most attention is the so-called 'West Lothian Question', which asks how it can be correct for Scottish MPs to involve themselves in issues such as education in England, when equivalent policy is devolved north of the border. This is likely to be particularly problematic if these members' involvement makes the difference between government winning and losing a vote. Given the size of Labour's majority in 1997 and 2001 this was not a major problem – though it did apply at times when backbench rebellions were large. Such occasions are now likely to be more frequent, given the smaller majority in 2005.
- At times in the past, Labour governments have been dependent on the votes of Scottish and Welsh MPs to secure majorities in the House of Commons (Table 4). This is not currently the case, but could happen again. Equally, Scotland and Wales have consistently voted Labour during recent periods of Conservative government (Table 5). The resultant tensions helped feed demands for devolution in those parts of the UK.
- There are three factors likely to cause territorial tension of a 'West Lothian' kind at Westminster. One is passage of bills affecting only certain parts of the UK. The second is the presence of devolved legislatures. The third is competing political majorities in different parts of the UK. Each of these conditions has often been met in the past. Today, with respect to Scotland, all three are potentially met at the same time.
- One solution that has been proposed is 'English votes on English laws', whereby MPs from one part of the UK are excluded from voting on legislation that exclusively relates to another. This appears to have public support, and is supported by English Conservative MPs, but not by English MPs from other parties.
- The closest comparator to debates about Scottish MPs now is debates about Irish MPs in the past, particularly during the 'home rule' debates of roughly a century ago. At this time various options were considered, but all deemed to be unworkable. Although these tensions ended with independence for Ireland, they continued in smaller form with respect to MPs from Northern Ireland during the existence of the Stormont parliament. At this time Labour's Harold Wilson considered excluding Northern Irish MPs from non-Northern Irish business, but this was opposed by the Conservatives and the proposal was dropped.
- With respect to Scotland, some tensions have existed ever since the time of the Union, due to separate legislation for different territories. In fact Scottish MPs have long tended to exclude themselves from much non-Scottish business at Westminster. Controversies about Scottish MPs voting on non-Scottish legislation and vice versa occurred before devolution, but the idea of 'two classes of MP' was rejected by those seeking to defend the Union.

- In Wales problems have less frequently occurred, due to the more interconnected nature of English and Welsh law: for most purposes England and Wales is a single legal entity. This remains the case now, despite devolution, and makes the position of Welsh MPs often ambiguous with relation to contemporary debates.
- In looking at historical examples we see that the political protagonists have tended to support positions for instrumental rather than principled reasons. In particular looking at the debates on Wilson's proposal we see the positions of the two main parties completely reversed compared to where they stand today. The same can be seen over previous debates on Scotland. The minor as well as the major parties adopt such instrumental positions.
- There are many obstacles to the proposal of 'English votes on English laws', some of which were explored during the home rule debates, and by the Kilbrandon Commission in the 1970s. In technical terms it is difficult to isolate which clauses in bills relate to which part of the UK, and to judge where there is indirect impact elsewhere. Politically, it is difficult to envisage the circumstances where the practice would apply. Constitutionally, it could result in a UK government which was unable to legislate on many matters, leading to a 'parliament within a parliament' or a need for coalition government, or both.
- In practice 'English votes on English laws' would therefore effectively create an English Parliament, albeit by the back door. A more transparent solution would be to consciously and explicitly adopt this change. However, it has relatively little public support and even less support amongst English MPs.
- Regional government for England is another proposed solution, although this has suffered setbacks recently. If implemented, it would tend to alleviate rather than resolve the problem, given the limited power likely to be held by regional assemblies.
- The final possible solution is procedural change at Westminster, through forums for the English similar to those previously constructed for Scotland and Wales. These too might have their merits; however they cannot ultimately provide a solution. The equivalent Scottish and Welsh structures provided outlets for Scottish and Welsh MPs, but did not prevent pressure for devolution from growing.
- In conclusion, devolution has thrown up some difficult conundrums at Westminster, which are not easily resolved. There is little sign at present that the English are ready for the kind of major constitutional change that would be required for the current anomalies to be fully dealt with. As with Scotland and Wales, tensions may develop over decades before there is sufficient public pressure for change to come about.

Introduction

In debates about England since devolution in 1999, few issues have received greater attention than the country's proper governance at Westminster. While Scotland and Wales (and intermittently Northern Ireland, since 1998) received their devolved institutions, and thus changed their relationships with the UK government, no consequent changes were made for the English. This is most visible at Westminster, where devolution has changed the roles of Scottish and Welsh MPs with respect to policy-making for their countries but the mechanisms for the governance of England remain largely untouched.

As parliamentary representation broadly reflects population distribution, the English are dominant at Westminster. Of the 646 members elected to the House of Commons in 2005, 529 (82 per cent) represented English constituencies.¹ The bulk of matters discussed at Westminster relate to England, and English MPs provide the overwhelming majority of both government ministers and members of parliamentary committees. This dominant Englishness of the UK parliament was one of the factors that helped fuel claims for devolution and institutions where Scottish, Welsh and Northern Irish matters received dedicated attention.² Yet, now that devolution has happened, new claims of inequity are heard. Despite England's continued dominance, questions are asked about whether it is adequate any longer for English matters at Westminster to continue to be treated in the same way as reserved all-UK matters. In particular, interest has focused on the continued involvement of MPs representing non-English constituencies in matters which affect England alone.

This briefing seeks to explore the way England is governed by Westminster, what objections have been raised to the current arrangements and what prospects there are for reform. In order to provide a context for the current debates we take a historical perspective, comparing the current controversies with other territorial tensions at Westminster in the past. We conclude that the conundrums thrown up by devolution are not new and that there are no immediate answers. These debates do, however, lead to profound questions about the extent to which we wish to continue to be governed as a united kingdom. The 'unionist' response to the anomalies would be to accept them, as other British constitutional anomalies have come to be accepted over time. Alternatively, gradualist change might be pursued in order to accommodate English business at Westminster, as applied to Scottish and Welsh business in the past. However, we suggest that this would be likely to prove unsatisfactory in the longer term, just as had the earlier arrangements, and lead to demands for further constitutional change. Yet the two alternatives – an English Parliament or 'English votes on English laws' – remain fundamentally problematic.

1. The government of England now

A starting point for our analysis is the way in which England is in practice governed by Westminster now, and what tensions have occurred since 1999. The first of these questions is in one sense simple to answer, as there has been almost no change. Prior to devolution,

¹ As representation in the House of Lords is not geographically based, this briefing relates exclusively to the House of Commons. However, England is also clearly dominant in the Lords – an ESRC-funded survey by the Constitution Unit in 2005 found that 85.5 per cent of peers had their main home in England. For a discussion of the impact of devolution on debates about House of Lords reform see Lodge, Russell and Gay (2004).

² While England is numerically dominant it should be noted that Scotland and Wales have long been over-represented in terms of the number of parliamentary seats they have in the House of Commons (McLean 1995).

while special arrangements existed for discussion of Welsh, Scottish and Northern Irish matters in the House of Commons (through dedicated select, standing and grand committees and questions to the secretaries of state), no similar provision existed for England. Following devolution, ironically the same structures for the devolved areas still exist (and are developing new roles), while no parallel English fora have been established. The single exception is the Standing Committee on Regional Affairs, which was reconstituted in 2000, having fallen into disuse. This has, however, been of minimal impact. The committee, and the special arrangements for Scotland, Wales and Northern Ireland, are discussed in more detail later in the briefing. The only other direct response to devolution has been the agreement to reduce the number of Scottish MPs (from 72 to 59) to bring the size of Scottish constituencies into line with those in England. However, this does little to address the anomalies, and the Welsh will continue to be over-represented (McLean 1995).

The procedures that apply to the government of England remain identical to those applied by Westminster to non-devolved matters of concern to the whole of the UK. Policy is made in Whitehall, with ministers responsible to parliament for all the policy of their departments which may apply to England only or also to other parts of the UK. In the House of Commons, accountability mechanisms include the select committees which now shadow each government department, written and oral questions to ministers, and scrutiny of government bills in the chamber and by standing committees.

The work of many Whitehall departments is now in practice largely English.³ As English business is not delineated, it is not possible exhaustively to document how these relationships work. But departments may be placed on a rough scale from the almost wholly English (ODPM, Department of Health), through the largely English (Department for Education and Skills) to those dealing primarily with non-devolved matters that affect the entirety of the UK (Foreign Office, Ministry of Defence). Due to the asymmetrical nature of the devolution settlement those departments that are not restricted to UK-wide matters may also deal to a greater or lesser extent with Welsh affairs. So for example the Department for Culture, Media and Sport is responsible for broadcasting policy in Wales, but not for museums and libraries.

It seems natural to expect that the relationship these departments have with Westminster would reflect their territorial coverage. As all MPs represent a geographic constituency they might be expected to seek involvement only in those matters directly affecting their constituents. If this were true one result of devolution could be a reduction in the involvement of MPs from some parts of the UK (particularly Scotland) with the business of some government departments.

Tables 1, 2 and 3 explore this hypothesis with respect to three forms of involvement: the holding of ministerial office; membership of departmental select committees; and the tabling of (written) parliamentary questions. These figures show a more complex relationship than might immediately have been supposed.

All three tables show the situation immediately prior to devolution and in 2002–3. One of the most striking results is that this period has seen relatively little change. Certainly there are some departments which are the province mainly of the English; but this was also the case prior to devolution: the health, education and agriculture departments, for example, included no ministers from outside of England in the 1997 government, and they were shadowed by select committees made up entirely of English MPs. The proportion of written questions put to those departments by English MPs was higher than the 80 per

³ See Lodge and Mitchell (2006).

cent that might occur randomly, although the same could also be said for some all-UK departments. In terms of select committee membership, and the pattern of questions, there has been almost no change in the territorial representation across departments. And although there is some indication of specialisation by Scottish and Welsh members in the business of departments dealing with reserved matters (for example, the Foreign Office and the Department for International Development), any change over time has been limited at best.

Table 1: House of Commons ministers in UK government departments by location of constituency

Department	May 1997				June 2003			
	Eng	Scot	Wal	NI	Eng	Scot	Wal	NI
Health	4	0	0	0	4	1	0	0
Education	4	0	2	0	6	0	0	0
Agriculture, Fisheries & Food ^a	3	0	0	0	-	-	-	-
Environment, Food & Rural Affairs ^b	-	-	-	-	3	0	1	0
Environment, Transport & Regions ^a	7	1	0	0	-	-	-	-
Transport ^b	-	-	-	-	2	1	1	0
Deputy Prime Minister ^b	-	-	-	-	5	0	0	0
Heritage/DCMS	3	0	1	0	3	0	0	0
Home Office	4	0	1	0	7	0	0	0
Trade and Industry	4	1	0	0	5	1	0	0
Treasury	2	3	0	0	3	1	0	0
Cabinet Office	2	0	0	0	0	1	0	0
Foreign Office	3	1	0	0	5	0	0	0
Defence	1	2	0	0	2	1	0	0
Lord Chancellor's Department ^a	1	0	0	0	-	-	-	-
Scottish Office/Scotland Office ^c	0	5	0	0	0	1	0	0
Welsh Office/Wales Office ^d	0	0	3	0	0	0	1	0
Northern Ireland Office	1	2	1	0	4	0	1	0
Constitutional Affairs ^b	-	-	-	-	2	0	0	0
Social Security/Work & Pensions	4	0	0	0	4	1	0	0
International Development	1	1	0	0	2	0	0	0
Leader of the House	1	0	0	0	1	0	1	0
Minister without Portfolio	1	0	0	0	1	0	0	0
Law Officers	0	0	1	0	1	1	0	0
Whips	13	2	1	0	13	2	1	0
Total	59	19	9	0	73	11	6	0
As % of total	68%	22%	10%	0%	81%	12%	7%	0%

Notes: ^a 1997 only; ^b 2003 only; ^c Scottish Office renamed Scotland Office in 1999; ^d Welsh Office renamed Wales Office in 1999.

Source: Dod's Parliamentary Companion 1997 and Dod's Parliamentary Companion 2003.

The biggest change over the period has been the drop in the number of Scottish ministers. At 22 per cent of the government, Scots were over-represented in 1997; they now hold a more proportionate share of positions. This may, however, be due more to chance than to devolution, as the biggest shifts have occurred in departments dealing with reserved

matters – such as the Treasury, the Foreign Office and the Department for International Development – as well as resulting from the slimming down of the Scottish (now Scotland) Office itself. Certain departments always were, and remain, largely English. However, devolution has focused attention on breaches of this convention. Notably there was much comment from the opposition and the press when John Reid, an MP representing a Scottish seat, was made secretary of state for health in June 2003.⁴ The Department of Health is not concerned wholly with English matters, as issues such as human genetics and abortion continue to be reserved. However, the Conservatives wasted no time in quoting the words of Scottish MP Robin Cook, when he was Labour’s shadow secretary of state: ‘Once we have a Scottish Parliament handling health affairs it would not be possible for me to continue as Minister of Health, administering health in England.’⁵

Table 2: Membership of departmental select committees, by location of constituency

Select Committee	1997-98 session				2002-03 session			
	Eng	Scot	Wal	NI	Eng	Scot	Wal	NI
Health	11	0	0	0	10	0	1	0
Education	17	0	0	0	11	0	0	0
Agriculture ^a	11	0	0	0	-	-	-	-
Environment, Food & Rural Affairs ^b	-	-	-	-	14	1	0	1
Environment, Transport & Regions ^a	15	1	0	1	-	-	-	-
Transport ^b	-	-	-	-	8	1	1	1
Office of Deputy Prime Minister ^b	-	-	-	-	11	0	0	0
Culture, Media and Sport	10	1	0	0	7	3	1	0
Home Affairs	11	0	0	0	11	0	0	0
Trade and Industry	9	2	0	0	9	2	0	0
Treasury	11	1	0	0	10	1	0	0
Public Administration	9	1	1	0	9	1	1	0
Foreign Affairs	8	2	2	0	10	0	1	0
Defence	9	2	0	0	8	2	1	0
Scottish Affairs	2	9	0	0	1	10	0	0
Welsh Affairs	2	0	9	0	2	0	9	0
Northern Ireland	9	0	0	4	5	3	1	4
Constitutional Affairs ^b	-	-	-	-	11	0	0	0
Social Security/Work and Pensions	10	1	0	0	8	3	0	0
International Development	9	1	1	0	8	2	1	0
Public Accounts	12	2	1	0	13	2	1	0
Total	165	23	14	5	166	31	18	6
As % of total	80%	11%	7%	2%	75%	14%	8%	3%

Notes: ^a 1997-98 session only; ^b 2002-03 session only

Source: House of Commons Sessional Returns 1997-98, 2002-03. Figures apply to end of session.

While there has been some controversy about the appointment of Scottish ministers to largely English departments, the main focus of attention by those who claim the English are suffering injustice has been the voting of MPs on legislation. It is here that party-

⁴ See Lodge (2003a: 22-3).

⁵ HC Debs, 18 June 2003, col. 361. Note, however that Bogdanor (2001) makes clear that this was not the official Labour line at the time and Cook’s comments were not well-received by party leader Neil Kinnock.

political arithmetic at Westminster has potentially the greatest impact on policy outcomes, and in close votes attention focuses on the behaviour of specific MPs. Since devolution there has been heightened interest in the behaviour of Scottish MPs, in particular, and their participation in votes where legislation directly affects only England or England and Wales. The same controversy applies potentially to Welsh MPs and their involvement in legislation that only affects England, but those cases are both less clear-cut and much less common.

Table 3: Written parliamentary questions to departments, by location of constituency

Department	1998-99 session %				2002-03 session %			
	Eng	Scot	Wal	NI	Eng	Scot	Wal	NI
Health	95	2	3	0	89	6	4	1
Education	96	2	2	0	95	3	2	0
Agriculture, Fisheries & Food ^a	91	3	6	0	-	-	-	-
Environment, Food & Rural Affairs ^b	-	-	-	-	89	6	5	1
Environment, Transport & Regions ^a	94	3	3	0	-	-	-	-
Transport ^b	-	-	-	-	89	8	3	1
Deputy Prime Minister ^b	-	-	-	-	96	2	2	0
Culture, Media and Sport	95	3	2	0	89	6	3	1
Home Office	96	1	3	0	91	5	4	1
Trade and Industry	88	4	8	0	81	12	7	1
Treasury	85	6	9	1	88	7	4	1
Cabinet Office	92	4	4	0	94	5	1	0
Foreign Office	87	7	6	1	78	13	8	1
Prime Minister	84	14	2	0	78	5	14	3
Defence	87	8	5	0	84	9	6	1
Lord Chancellor's Department ^a	96	1	3	0	91	3	4	2
Scottish Office/Scotland Office ^c	35	64	1	0	51	48	1	0
Welsh Office/Wales Office ^d	33	3	64	0	60	5	35	1
Northern Ireland Office	58	4	2	35	19	2	2	77
Constitutional Affairs ^b	-	-	-	-	87	5	6	3
Social Security / Work & Pensions	90	6	4	0	84	12	3	0
International Development	88	6	5	1	76	18	5	1
Leader of the House	95	2	3	0	90	4	6	0
Law Officers	94	2	4	0	92	2	6	0
Advocate General	-	-	-	-	60	40	0	0
Total	86	6	6	1	86	6	6	1

Notes: ^a 1998-9 session only; ^b 2002-3 session only; ^c Scottish Office renamed Scotland Office in 1999; ^d Welsh Office renamed Wales Office in 1999.

Source: House of Commons Library POLIS system.

This issue was raised as an objection during the devolution debates in the 1970s by the then MP for West Lothian Tam Dalyell. He asked how it could be correct that, with a Scottish Parliament in place, Scottish MPs could continue to vote on issues such as education in England when they could no longer vote on education in Scotland. This conundrum came to be known as the West Lothian Question. By raising the issue in

connection with devolution Dalyell obscured the issue (discussed in the next section) that the distinct system of administration in Scotland meant that English MPs had long voted on bills that affected only Scotland, while Scottish MPs had voted on legislation that would apply only in England and Wales. His objection was thus essentially that the reciprocity of the old system was to be lost. Devolution would remove from English MPs the right to do something questionable, but would do nothing to apply the same strictures to the Scots.

When the 1997 Labour government implemented devolution the West Lothian Question re-emerged in debates.⁶ However, the anomaly created was not expected to surface seriously for some time. The real difficulty would occur if Scots' votes were to make a difference to legislative outcomes, and this appeared unlikely given the parliamentary arithmetic. Only 72 MPs represented Scottish constituencies, while Labour had a parliamentary majority of 177. As well as having won an overwhelming majority of seats in Scotland and Wales, Labour also held a comfortable majority in England (127 seats in 1997, see Table 4). With the politics of Scotland, Wales and England aligned, tensions seemed unlikely to occur.

There have been a number of controversies at Westminster since 1997, however, which have brought the West Lothian Question to the fore. These have occurred in two sets of circumstances: first, when MPs were not subject to a party whip and instead participated in free votes; second, when there have been sizeable rebellions in Labour's ranks which could have resulted in government defeats.

One of the first issues on which the question was raised was the government's legislation to control hunting with dogs. The 1997 Labour manifesto had promised a parliamentary decision on the matter, which would be taken by a free vote. This was not reached until 2000, by which time responsibility for the regulation of hunting in Scotland had been devolved to the Scottish Parliament. Hence Conservative MP David Lidington asked the Home Secretary whether he would 'urge all honourable members representing Scottish constituencies at Westminster to refrain from taking part in debates and votes on the Bill?'⁷ The government was dismissive of this objection, but as the vote approached the newspapers took some interest. In the event, the House of Commons voted overwhelmingly for a total ban on hunting with dogs. Although 23 Scottish MPs took part in the division their participation made scant difference to the 373 to 158 outcome.⁸

Other controversies have arisen when the government has introduced bills which do not have the full support of its own backbenchers. On these issues the West Lothian Question, which was normally an objection raised by Conservative MPs, also gave rise to concerns among Labour members, especially those representing English constituencies. In July 2000 Labour backbencher Bob Marshall-Andrews wrote to Scottish members urging them to refrain from voting on the Criminal Justice (Mode of Trial) Bill, which sought to limit access to jury trials, as these provisions would not apply in Scotland. He and other Labour rebels hoped to defeat the Bill, which had already been rejected by the House of Lords. However, as the rebellion at third reading attracted only 27 Labour members and the Bill passed by 282 votes to 199, the 34 Scottish members who voted in favour of it were, once again, not crucial to the outcome.⁹

⁶ See for instance the debate on the devolution White Papers: HC Debs, 31 July 1997, cols 473-4.

⁷ HC Debs, 12 June 2000, col. 642.

⁸ HC Debs, 20 December 2000, cols 464-9.

⁹ HC Debs, 25 July 2000, cols 938-9.

In the 2001 parliament the propensity of Labour members to rebel, however, rose.¹⁰ Although Labour's majority remained high at 165, rebellions brought the government close to defeat on a number of occasions. In two cases these rebellions related to bills which were limited in their territorial application to England, excluding Scotland and, arguably, Wales. This gave the West Lothian Question a new salience which had not existed in Labour's first term.

The subject of the first such rebellion was the government's Health and Social Care (Community Health and Standards) Bill in 2003, which sought to implement the proposals for foundation hospitals that were highly controversial in Labour ranks. The changes would not apply in Scotland, where health is devolved, and although the Bill covered 'England and Wales' the specific provisions for foundation hospitals were said not to apply to Wales, and had been overtly rejected by the Welsh Assembly.¹¹ Former Health Secretary Frank Dobson and Chair of the Health Select Committee David Hinchliffe led the Labour revolt. Concerned that the policy might scrape through on the votes of loyal Scottish MPs, Dobson argued that Scottish members should absent themselves from the vote on the Bill's third reading on 8 July.¹² In this claim he was supported by the Conservatives, who opposed the Bill, and by elements of the press, particularly in Scotland. At report stage an amendment tabled by David Hinchliffe sought to remove the foundation hospital provisions from the Bill. The amendment fell, by 286 votes to 251. However, on the votes of English MPs alone it would have passed, by 218 to 217 – a fact that was widely noted. Later, when the Bill returned from the House of Lords on 19 November, the government's majority was cut further, to just 17, with 62 Labour members voting against on the crucial amendment. On this occasion the government would have lost by seventeen votes if only English MPs had voted.¹³ As a result Tim Yeo, Conservative Shadow Secretary of State for Health and Education, declared the outcome a 'constitutional outrage'.¹⁴

A similar situation developed with respect to the government's Higher Education Bill in January 2004, which sought to implement controversial student 'top-up fees'. Again the main provisions of this Bill would not apply in Scotland, which has a separate higher education system under the control of the Scottish Parliament. The bill also allowed for tuition fees to be introduced in Welsh universities but left the decision to do so to the Welsh Assembly, which had rejected the plan. At the second reading 73 Labour rebels voted against, but the Bill passed by 316 to 311. If only English and Welsh members had voted, it would have fallen by six votes.¹⁵

These rebellions therefore brought the issue of Scots MPs voting on non-Scottish legislation into the public eye unexpectedly early; already illustrating the likely direction

¹⁰ See Cowley and Stuart (2004).

¹¹ See the explanatory notes published with the House of Lords Bill 94, Health and Social Care (Community Health and Standards) Bill, 9 July 2003.

¹² See his article in the *Guardian*, 8 July 2003. For a full account of the debates surrounding the first foundation hospital vote, and a full territorial breakdown, see Lodge, Russell and Gay (2004).

¹³ If the votes of Welsh MPs had also been included the government would have lost by four votes; for a breakdown of this vote see Lodge (2003b).

¹⁴ HC Debs, 19 November 2003, col. 856.

¹⁵ For a breakdown of this vote see Lodge (2004). The vote on second reading was of course about the general principles of the Bill (some of which applied to Scotland), though the focus of the rebellion was on 'top-up' fees. At report stage on 31 March 2004 there was an opportunity to vote on a rebel amendment specifically on fees. At this point there were 55 Labour rebels, and the amendment fell by 316 to 288. If only English members had voted, the amendment would have passed by 2 votes; however, if Welsh members were included, it would have fallen by 11 votes. In total 47 Scottish MPs voted with the government (with 2 against) and 12 Northern Irish members voted against the government. This episode attracted far less attention than the second reading vote.

of debates if a future Labour government had a smaller majority. As the largest group, and seen as very loyal to the government, the Scots have been the main focus of attention, although some tensions have also arisen with respect to the involvement on English-only matters of Welsh and Northern Irish MPs. At times of controversial votes the Conservative opposition has been particularly critical of Scottish MPs' involvement and, along with the protests of some Labour rebels, this has attracted the interest of the press. For example, following the failure of the first foundation hospitals rebellion the *Scotsman* suggested that the 'English public would be outraged'.¹⁶ Following the second vote the *Daily Mail* front-page headline suggested that the government had been 'humiliated': 'Blair Rocked As Hospitals Bill Is Saved by Scots MPs'.¹⁷ Such interest on the part of the press is potentially important in turning the issue into one of wider public debate.

The Conservative Party's response is to suggest a policy of 'English votes on English laws', whereby MPs from outside of England are formally barred from voting on English matters. Although this has not proved to be a high-salience issue, the proposal appears to have public support. By 2003 some 60 per cent of English people and 48 per cent of Scots believed that 'Scottish MPs should no longer be allowed to vote on English legislation' (Curtice 2006). Even higher support was found in a YouGov poll for the *Daily Telegraph* in February 2004, showing that 66 per cent of English and 78 per cent of Scottish voters favoured limitations on the voting rights of Scottish MPs.¹⁸

Table 4: Election results 1945 - 2005 in UK and England

Election	UK						England					
	Con	Lab	Lib	Other	Total	Govt	Con	Lab	Lib	Other	Total	Majority ^a
1945 ^b	210	393	12	35	640	Lab	167	331	5	7	510	Lab
1950	298	315	9	3	625	Lab	253	251	2	0	506	(Con)
1951	321	295	6	3	625	Con	271	233	2	0	506	Con
1955	345	277	6	2	630	Con	293	216	2	0	511	Con
1959	365	258	6	1	630	Con	315	193	3	0	511	Con
1964	304	317	9	0	630	Lab	262	246	3	0	511	Con
1966	253	364	12	1	630	Lab	219	286	6	0	511	Lab
1970	330	288	6	6	630	Con	292	217	2	0	511	Con
1974 Feb	297	301	14	23	635	Lab	268	237	9	2	516	Con
1974 Oct	277	319	13	26	635	Lab	253	255	8	0	516	(Lab)
1979	339	269	11	14	635	Con	306	203	7	0	516	Con
1983	397	209	23	21	650	Con	362	148	13	0	523	Con
1987	376	229	22	23	650	Con	358	155	10	0	523	Con
1992	336	271	20	24	651	Con	319	195	10	0	524	Con
1997	165	418	46	30	659	Lab	165	328	34	2	529	Lab
2001	166	412	52	29	659	Lab	165	323	40	1	529	Lab
2005	198	355	62	31	646	Lab	194	286	47	2	529	Lab

Notes: ^a Entries in brackets denote largest party, but no overall majority. Entries in bold denote differs from UK governing party.

^b 1945 figures for England exclude university seats.

Source: Rallings and Thrasher (2001), BBC website.

¹⁶ *Scotsman*, 9 July 2003.

¹⁷ *Daily Mail*, 20 November 2003.

¹⁸ *Daily Telegraph*, 16 February 2004.

Those protests have, however, found little sympathy among most Labour MPs, and there is scant evidence of Scottish MPs changing their behaviour. Analysis of voting in the 2001–02 parliament shows that Scottish MPs voted on average on 61.2 per cent of legislation not covering Scotland – only marginally below their turnout of 70.1 per cent on bills that did apply to Scotland.¹⁹ A survey of MPs in 2004 found that 92.5 per cent of Conservative members believed that Scottish and Northern Irish members should be excluded from voting on legislation affecting only England and Wales; but just 8 per cent of Labour members agreed.²⁰ The position of the government, which potentially has much to lose from restrictions on so loyal a body of MPs, has been resolute opposition to change. Tony Blair, speaking to the House of Commons Liaison Committee in July 2003 said: ‘we have a constitutional settlement and part of that constitutional settlement is that you do not have two classes of member ...Yes, it is true that Scottish MPs will vote on exclusively English issues but there should not be two classes of MP.’²¹

The Conservatives potentially have a strong party-political interest in establishing limits on the behaviour of Scottish (and Welsh) MPs. The party has not won a majority in Scotland since 1955, and in Wales has not done so since 1841.²² Election results in Scotland, Wales and Northern Ireland since 1945 are shown in Table 5. At times, however, the Conservatives have had a majority among English MPs when Labour has been in government nationally, as shown in Table 4. This occurred in 1964 and in February 1974, while Labour had no overall majority in England in October 1974. The question of who votes on legislation affecting only England would take on a new political dimension if a future Labour government were again dependent on Scottish votes to secure all of its legislation, and controversies since 1997 have already set this issue up as a potential inter-party battleground. Despite the decline in Labour’s majority in 2005 this situation has not occurred yet, but could do so in the future.

In order to analyse the likely impact of such a situation, as well as how new arrangements for England at Westminster might develop, it is to historical examples that we now turn. We then return at the end of the briefing to consider what these precedents might tell us about the future.

2. Historical precedents

A brief look at history shows that the concerns currently troubling policy makers are far from new. Indeed with respect to the central controversy, Brigid Hadfield has commented that only ‘those with short memories called this the “West Lothian Question”’ (1989: 89). Such concerns can be traced back at least as far as the home rule debates of the late nineteenth century, while more general territorial tensions between the Scots and English at Westminster are as old as the Act of Union itself. In this section we look briefly at some of the tensions that have emerged with respect to the four different nations of the UK.

¹⁹ This rather crude calculation uses the ‘territorial extent’ clause of each bill to determine whether or not it applies to Scotland, and counts all ‘Sewel motion’ bills as applying to Scotland. For a discussion of the technical difficulties of such calculations see the final section of the briefing.

²⁰ Leverhulme–ESRC-funded survey by the Constitution Unit. For the Conservatives $n = 57$, for Labour $n = 107$. The equivalent survey in 2002 found support for the proposition among 79 per cent of Conservative MPs, suggesting that attitudes are hardening.

²¹ Liaison Committee, Evidence Presented by the Rt Hon. Tony Blair MP, Prime Minister, on Tuesday 8 July 2003, HC 334–ii, Q281.

²² The Conservatives did win a majority in Wales in 1859 but it was dependent on the support of the Liberal Conservatives (Rallings and Thrasher 2001).

In analysing these examples it is useful to distinguish between three factors which have fuelled territorial tensions. These may also help us to better understand the anomalies that face us today. Two of these factors are strictly constitutional, while the third is political.

First, tensions between representatives of different territories have been heightened where there have been distinct territorial bills at Westminster, which is most likely where the territories are governed by distinct bodies of law. This situation has applied in Scotland since the Union. It also applied to the whole of Ireland until 1920, and (to greater or lesser extents) to Northern Ireland thereafter. Over these periods there have been Scottish bills and Northern Irish bills, alongside bills applicable only in England and Wales, as well as others affecting the UK as a whole. This makes more transparent the involvement of some MPs in voting on matters that do not concern their constituents.

Second, problems have arisen where there has been legislative devolution in one or other part of the UK, resulting in MPs sitting at Westminster for areas where parliament no longer controls some policy areas. Concerns about the consequences of such arrangements were raised during the early home rule debates, applied during the period of the Stormont parliament in Northern Ireland, and have arisen again now with respect to the Scottish Parliament, and to a lesser extent the Welsh Assembly.

Third, aggravation is most likely when the political balance of representation in one nation differs from that in the UK as a whole, resulting in that nation being subject to a government in Westminster which does not reflect its political views. As tables 4.4 and 4.5 show, this applied in Wales during all periods of Conservative government after 1945, in Scotland during all periods of Conservative government after 1959, in Northern Ireland during all periods of Labour rule, and in England in 1964 and 1974. The matter may come to concern the UK as a whole, rather than just the territory concerned, if the representatives of that territory are numerous enough to routinely influence the outcome of parliamentary votes.

2.1. Ireland

Ireland and, after 1921, Northern Ireland provide many of the closest parallels to the situation facing us today. Few of the anomalies currently perplexing politicians were not fully aired during the home rule debates of 1885–1920. Ireland had been formally part of the Union since 1800, at which time its parliament was dissolved and Irish members took seats at Westminster. At the 1885 election, following a widening of the franchise, 85 of the 103 Irish seats were won by nationalists who supported Irish home rule. This provoked immediate territorial tensions, of the third kind suggested above, heightened by the fact that the Irish representatives held the balance of power in the House of Commons. Home rule thus became a central political issue, as the support of this group was needed to maintain a government.²³

Throughout the home rule debates the issue of Irish representation at Westminster was central. The schemes proposed would create a body in Ireland with extensive legislative power. Thus at least two of the three criteria indicated above potentially would be met. The Irish held the balance of power in the Commons not only in 1885 but again in 1892 and after both elections in 1910, and during those periods formed alliances with the Liberals. Hence the Conservatives were particularly exercised by the prospect of their continued presence, which would appear indefensible if a new Irish legislature was created.²⁴ The first Home Rule Bill in 1886 thus sought to exclude Irish MPs from Westminster. But this created new anomalies, as the Irish would continue to be taxed by

²³ See Bogdanor (2001) and McLean (2001).

²⁴ See McLean and McMillan (2006).

London (which would also retain control over other 'imperial' matters such as defence) without representation. While far from the only issue of contention, this difficulty added to opposition to the Bill.

The 1893 Home Rule Bill thus sought instead to deal with the problem by implementing a compromise known as the 'in and out' solution, which Gladstone had previously rejected as unworkable. The proposal, similar to that supported by those now proposing 'English votes on English laws', would have retained Irish members but forbidden them to 'deliberate or vote on' any issue not directly affecting Ireland. This clause, however, was removed from the Bill at its committee stage (Hadfield 1989). The final version of the Bill included a different compromise, to reduce the number of Irish seats.

Table 5: Election results 1945 - 2005 in Wales, Scotland and Northern Ireland

Election	Wales							Scotland							Northern Ireland ^d					
	Con	Lab	Lib	PC	Other	Total	Maj ^a	Con	Lab	Lib	SNP	Other	Total	Maj ^a	ConU ^c	U	N	Other	Total	Maj ^a
1945 ^b	4	25	6	0	0	35	Lab	27	37	0	0	7	71	Lab	8		2	2	12	ConU
1950	4	27	5	0	0	36	Lab	31	37	2	0	1	71	Lab	10		2	0	12	ConU
1951	6	27	3	0	0	36	Lab	35	35	1	0	0	71	NOC	9		2	1	12	ConU
1955	6	27	3	0	0	36	Lab	36	34	1	0	0	71	Con	10		2	0	12	ConU
1959	7	27	2	0	0	36	Lab	31	38	1	0	1	71	Lab	12		0	0	12	ConU
1964	6	28	2	0	0	36	Lab	24	43	4	0	0	71	Lab	12		0	0	12	ConU
1966	3	32	1	0	0	36	Lab	20	46	5	0	0	71	Lab	11		0	1	12	ConU
1970	7	27	1	0	1	36	Lab	23	44	3	1	0	71	Lab	8		0	4	12	ConU
1974 Feb	8	24	2	2	0	36	Lab	21	40	3	7	0	71	Lab		11	1	0	12	Other
1974 Oct	8	23	2	3	0	36	Lab	16	41	3	11	0	71	Lab		10	1	1	12	Other
1979	11	22	1	2	0	36	Lab	22	44	3	2	0	71	Lab		10	1	1	12	Other
1983	14	20	2	2	0	38	Lab	21	41	8	2	0	72	Lab		15	2	0	17	Other
1987	8	24	3	3	0	38	Lab	10	50	9	3	0	72	Lab		13	4	0	17	Other
1992	6	27	1	4	0	38	Lab	11	49	9	3	0	72	Lab		13	4	0	17	Other
1997	0	34	2	4	0	40	Lab	0	56	10	6	0	72	Lab		13	5	0	18	Other
2001	0	34	2	4	0	40	Lab	1	55	10	6	0	72	Lab		11	7	0	18	Other
2005	3	29	4	3	1	40	Lab	1	40	11	6	1	59	Lab		10	8	0	18	Other

Notes: ^a Entries in brackets denote largest party, but no overall majority. Entries in bold denote differs from UK governing party.

^b 1945 figures exclude university seats.

^c Unionist MPs returned to Westminster were formally linked to the Conservative and Unionist Party, taking the Conservative whip in parliament prior to the 1974 election.

^d U denotes parties post 1974 defining themselves as Unionist, N denotes parties from the nationalist/republican spectrum.

Source: Rallings and Thrasher 2001, BBC website.

As was pointed out to Gladstone, this could only ameliorate, rather than deal with, the problem. In 1889 he commented that 'the real problem' with home rule remained 'determining the particular form in which an Irish representation may have to be retained at Westminster' (quoted in Bogdanor 2001: 34). In the end the second Home Rule Bill also failed. The anomaly – at least with respect to representation of the south of Ireland – disappeared as a result of Irish independence.²⁵

While the South gained its independence, however, the conundrum at Westminster continued to apply with respect to representation of the North. In 1921 a Northern Ireland legislature (commonly known as 'Stormont') with wide-ranging powers was created. At the same time, Northern Irish MPs would continue to sit at Westminster, albeit with a reduced representation of thirteen seats.²⁶ The situation with respect to Northern Ireland thus met the second of the key conditions identified above – the presence of a devolved institution – meaning that Northern Irish members could vote for all matters at Westminster, while many matters in Northern Ireland were devolved. This was the first time Westminster had faced such a situation. At times during this period the third condition was also met, in that the political balance of the Northern Irish seats conflicted with that of the UK government when Labour was in power. As the number of Northern Irish seats was small this was of limited importance during the first post-war Labour governments. However, it became more salient under the narrow majorities in the 1960s and 1970s.

In 1964 the first Wilson government was elected with a majority of just four, and the votes of the Northern Irish MPs became a constant source of aggravation. A particular issue of dispute was the government's plans for nationalisation of the steel industry. As Wilson recorded in his memoirs, 'the Conservatives could hold up our legislation only because they could command the votes of their twelve Ulster unionist allies, voting on steel policy in Great Britain even though the measure would not affect Northern Ireland' (1971: 178). As a result Wilson became 'adamant he would address this anomaly' (Knox 2000: 162). He therefore turned to the familiar 'in and out' solution, writing in 1966:

We ought to make up our minds about the idea which I aired last Spring, that Northern Ireland MPs should not have the right to vote in the House of Commons on purely domestic matters affecting Great Britain, where the Stormont Parliament has exclusive jurisdiction on the same subject in relation to Northern Ireland. (Letter from Wilson to the Lord President, quoted in Knox 2000: 162)

This proposal was passed to the Attorney General, but he considered it unworkable (Knox 2000). It was also met with hostility by the Conservative Party. The then Shadow Home Secretary Peter Thorneycroft responded in remarkably similar terms to those taken by the current government, requesting that the Wilson government 'make it absolutely clear that that kind of nonsense does not form any part of the government's thinking, that every Member of the House of Commons is equal with every other Member of the House of Commons, and that all of us will speak on all subjects' (quoted in Bogdanor 2001: 230).²⁷ Having won a greatly increased majority in the election of 1966, Wilson let the matter drop.

Northern Irish MPs were once again pivotal in the parliaments of 1974, though by that time in changed circumstances. The Stormont parliament was prorogued in 1972, and by May 1974 direct rule for Northern Ireland had been introduced. All matters relating to Northern Ireland were therefore now to be decided at the UK level. Certain Northern Ireland matters

²⁵ The third Home Rule Bill, which became the Government of Ireland Act (1914), proposed a total of forty-two Irish MPs at Westminster with no 'in and out' restrictions. However, the Act was suspended due to the outbreak of the First World War (Hadfield 1989).

²⁶ This included one seat for Queen's University in Belfast, which was abolished alongside the other university seats at Westminster in 1948.

²⁷ HC Debs, 26 October 1965, col. 97.

had never been devolved and continued to be dealt with through Northern Ireland bills at Westminster. Under the Northern Ireland Act (1974) matters that had previously been devolved were to be implemented through Orders in Council.²⁸ Although the second condition for territorial tension was no longer met, there were now new anomalies. While questions might be raised about Northern Irish involvement in English, Welsh and Scottish legislation, MPs from other areas continued to be involved in Northern Irish bills while much other Northern Irish business received little parliamentary scrutiny at all.

Following the election of February 1974, Conservative Prime Minister Edward Heath sought to hold on to power by forming a coalition. As well as talking to the Liberals as potential partners he approached some of the Northern Irish Unionists (who had severed their formal links to the Conservative Party due to serious policy differences). Alan Clark reports how 'Heath offered the Conservative whip ... to seven of the Unionists, excluding the four Paisleyites' (1997: 439). However, the Unionists refused to co-operate. Had these manoeuvres succeeded, controversies would almost certainly have flared up again on the Labour side about a government in London dependent on Northern Irish votes. Instead the Conservatives did not face this problem until the latter days of the Major government, in the 1990s, when cross-party support for peace negotiations made any Labour protests muted.

2.2. Scotland

Scotland offers a contrasting example. Here there was no separate legislative assembly until 1999. However, the two other criteria for creating territorial tensions at Westminster have long applied.

The Union of the Crowns in 1603, and then the Acts of Union in 1707, preserved Scotland's separate legal system and body of statute law. The power to legislate for Scotland passed to the Westminster parliament, but any alterations in law started from a distinctly Scottish base. In the three centuries that followed there was a convergence, but Scotland retained many distinct traditions, including its system of courts, local government and education. Consequently distinct Scottish acts continued to be passed at Westminster, while many other acts either included separate provisions for Scotland or applied to England and Wales alone.

From the start there were territorial tensions, and in the early years of the Union both the Scots and the English were cautious about proposing Scottish legislation at Westminster, for fear that the more numerous English would impose their will. As Innes reports: 'The charge that the English were presuming to determine what was good for the Scots or the Irish was always potentially an inflammatory charge. So, for the Westminster parliament to legislate for three kingdoms was a distinctively difficult business' (2003: 18). She shows that, more than a century after the Union, much legislation remained territorially distinct - in the period 1817-29 around 1,850 public and general acts were passed, of which only around 1,000 were UK- or Britain-wide, with around 300 applying only in England and Wales, 100 only in Scotland and the remainder only in Ireland. Within these areas 'the preponderant local view did not always prevail and this was potentially a source of tension between the nation legislated for, and Westminster' (*ibid.*: 34-5).

The inability of Scots members to control Scottish affairs through Westminster fuelled calls for devolution. Yet on the nine occasions between 1893 and 1977 when the issue of establishing a separate parliament for Scotland was voted on in the House of Commons, a majority of Scottish MPs voted in favour, only to see the proposition defeated by the votes of non-Scottish MPs (Miller 1981).

²⁸ Between 1972 and 1997, 33 Northern Irish Acts were passed but these were dwarfed by the 557 Orders in Council for Northern Ireland over the same period (Bogdanor 2001).

As with Northern Ireland, some territorial tensions emerged during the Wilson governments in the 1960s. In 1969 the Conservatives opposed Labour's abolition of school fees in Scotland, despite the government's overwhelming majority north of the border. Asked whether it was not inappropriate to use English votes in the attempt to defeat the policy, Conservative spokesman Michael Noble responded: 'I do not find it an atom embarrassing to have to ask my English colleagues to come to the House this evening and vote against the clause' (quoted in Keating 1975: 33).²⁹ Such tensions also applied in reverse. For example, many Scots did not refrain from voting on Leo Abse's 1966 Private Member's Bill on homosexual law reform, although it had – specifically in order to avoid their opposition – been drafted to apply only in England and Wales (Keating 1975).

Conflicting majorities between Scotland and the UK as a whole have also been frequent. Scotland voted consistently Liberal from 1832 to 1885, and has voted consistently Labour since 1959, thus bringing it into conflict with all Conservative governments during those periods (Rallings and Thrasher 2001). On many occasions distinctly Scottish law has therefore been decided by a hostile political majority. Although this was often handled with sensitivity, hostilities reached their height under the Thatcher governments. The most famous example relates to the piloting of the poll tax in Scotland before it was introduced in England and Wales. The Abolition of Domestic Rates (etc.) Scotland Bill was introduced into parliament in 1986, against protests from Scotland where Labour held 41 out of 72 parliamentary seats. Donald Dewar, Shadow Scottish Secretary, derided the Conservative government for its determination to 'lumber us with and penalise us by a scheme that is without friends or supporters in Scotland'.³⁰ However, Malcolm Rifkind, the Scottish Secretary, rejected the idea that the Conservative government did not have a mandate with which to pursue its policy in Scotland. He argued that, since 'no Labour government bar one has had a majority in England since 1951 – that corresponds to the position of the Conservative Party in Scotland – the Hon. Gentleman must apply his new, curious constitutional principle throughout the spectrum of government or cease to use such arguments'.³¹

The particular legal position of Scotland always resulted in a certain separation between Scottish MPs and their colleagues south of the border. As Kellas noted (1975: 78): 'Scottish MPs are a distinct group in the House of Commons. They have their own Bills to discuss; their own committees to sit on; and their own ministers to question. These activities set them apart from other members, who do not share these duties or interests.' The Scottish Grand Committee was established in 1907 and took the second reading of uncontroversial Scottish bills.³² In 1957 a Scottish standing committee was created (and joined by another in 1962) to take the committee stage of such bills. Finally, the Select Committee on Scottish Affairs was created in 1969 – a decade before its Welsh counterpart and the other departmental committees.

Given the extent to which Scottish business at Westminster was treated separately, the involvement of Scottish MPs in other business in the House has always been limited, and increasingly so as distinct Scottish fora have developed. Thus, while some departments have long been less involved in Scottish matters, particularly as the Scottish Office grew in influence, so Scottish members have long been almost absent from parliamentary committees dealing with the business of those departments. As already noted, such absence is not simply a result of devolution: Keating found that when the Select Committee on Agriculture was

²⁹ HC Debs, 21 January 1969, col. 294.

³⁰ HC Debs., 9 December 1986, col. 222.

³¹ HC Debs, 4 March 1987, col. 884.

³² Standing orders provided that if ten or more MPs objected, the second reading would instead be taken on the floor of the House.

first created, in 1967, its members included no Scottish MPs. Two Scots were later added, however, 'for their interest in the formation of agricultural policy at the UK level, which involves an interplay between the MAFF and the Scottish Office' (1975: 251). Similarly Scottish MPs' representation on legislative standing committees was generally determined by whether or not there was a Scottish interest. Keating shows that of 653 bills considered by standing committees between 1945 and 1970 (excluding purely Scottish bills), 130 applied only to England and Wales and eight to England alone. Of the 3,900 members who served on the committees considering those bills, just 55 (1.4 per cent) represented Scottish constituencies.

2.3. Wales

In Wales the situation is different again. Here there was no devolved institution until 1999 and, unlike in Scotland, the opportunity for tensions to arise from a separate legal system did not apply. England and Wales form one legal jurisdiction and Welsh bills, although not unheard of, have been rare. The main tension with respect to Wales has thus been the consistent left-wing majority (initially Liberal, latterly Labour) among Welsh MPs since 1865. This meant that Wales was frequently governed by a majority in London that did not match its own political desires, which fed support among many for devolution. In contrast the involvement of Welsh MPs in decision-making was rarely controversial, as most bills that applied to England would also apply to Wales.

On some Wales-only issues, or issues that primarily affect Wales, controversies have occurred. The most protracted example concerned the push for the disestablishment of the Anglican Church of Wales throughout the period from 1880 to 1914. Welsh aspirations to see the removal of the 'alien church' faced prolonged opposition from English Conservatives both in the Commons and the Lords. Disestablishment was consistently supported by a majority of Welsh MPs when it was voted on in the Commons, with these members pointing to the numerical support for nonconformity among the Welsh electorate, who consistently voted in favour of the cause.³³ Yet this did not stop the Conservative Party, which 'made clear its determination to fight the bill hard at every stage', and whose members in the Lords twice rejected the third Welsh Disestablishment Bill (Morgan 1991: 263). Morgan shows how part of the Conservative opposition rested on their claims that 'Wales had "no separate national existence" and could not therefore receive separate legislation.' (*ibid.*: 146)

Prior to establishment of the new Welsh Assembly in 1999, various concessions had been made to the desire for separate Welsh government, both in Whitehall and at Westminster. Following pressure for Welsh representation during the home rule debates it was agreed in 1907 that a parliamentary committee made up of Welsh members should be established to consider the committee stage of Welsh legislation. However, the committee 'had very little significance' as there were so few such bills (Jones and Wilford 1986: 6). In 1960 the Welsh Grand Committee was established to consider more general Welsh business. The Welsh Office and the post of Secretary of State for Wales were created in 1964, and responsibility for overseeing their work passed to the new Select Committee on Welsh Affairs in 1979. The Conservatives, while maintaining these arrangements, frequently had difficulties staffing them given their weakness in Welsh constituencies. As Bogdanor (2001) notes, only one Conservative Secretary of State for Wales has ever sat for a Welsh constituency.

2.4. England

Even more than Wales, England has never had a distinct legal identity at Westminster. As Keating's exhaustive study of the period 1945-70 indicates, there have been few bills relating

³³ For information on the numerous votes on Welsh disestablishment see Morgan (1991).

exclusively to English business. This, combined with England's numerical dominance in the House of Commons, led to few pressures for exclusively English fora to mirror those created for Scotland, Wales and Northern Ireland. Where England's government has been decided by the balance of votes in Scotland or Northern Ireland – as in the examples above – the same has applied to Wales, with which it shared its legal system.

There have, of course, been a small number of bills that affect England alone. McLean and McMillan (2006) have drawn attention to the defeat on Celtic votes of the 1928 *Book of Common Prayer*, despite Scottish MPs' awareness that their action was controversial. This, they suggest, may have been an example of the Celts achieving 'rough justice' in revenge for the repeated blocking by the English of Welsh disestablishment.

3. Prospects for resolving the English Question

A review of historical precedents is informative for various reasons, but above all it probably teaches us two things. First, that the puzzles facing us now are not new, are not a result solely of devolution and are not easily solved. Second, that interest in these questions often has been driven more by instrumental political motives than by constitutional purism alone.

We see that territorial tensions at Westminster have existed at various times in the past as a result of the UK's history as a union state, and have occurred particularly when one of three conditions were met. With respect to Scotland the opportunity for tension has long existed thanks to the separate Scottish legal system and the existence of distinct Scottish bills which have always made Scottish MPs at Westminster rather different from the rest. It would be a mistake to believe that their voting on bills relating only to England or to England and Wales is new, though they have long been largely absent from committees dealing with English business. Tensions rose, however, when, from the 1959 general election onwards, Labour enjoyed a majority among Scottish MPs, which clashed with the government majority at UK level for 27 of the succeeding 38 years. This became a major driver for devolution. With respect to Ireland, solutions were sought, without success, that would solve the conundrum of MPs at Westminster representing areas for which much business was devolved. The problem disappeared with respect to the South when it gained independence, but remained in lesser measure for the North. The presence of even a small number of Northern Irish MPs with full voting rights during the Stormont period caused irritations in the 1960s thus indicating that a reduction in numbers of Scottish MPs might ameliorate present problems, but not fundamentally resolve them. All this having been said, the current tension with respect to Scotland is new in historical context in that it now meets all three criteria which have previously presented difficulties. It has a separate legal system, leaving Westminster passing many bills relating only to England and Wales, a powerful devolved institution, and a political makeup at Westminster frequently different from that across the UK. The resulting difficulties therefore may come to exceed those experienced in the past.

In terms of solutions, history teaches us that the issue of MPs from one territory being involved in policy-making for another has tended to preoccupy most those disadvantaged in a party-political sense. Thus Harold Wilson was just as aggravated by the role of Northern Irish MPs in the 1960s as are contemporary Conservative politicians about the role of the Scots today. The response that he received from the Conservative front bench was remarkably similar to that given by Labour ministers now. At that time the Conservatives supported the Unionist principle – whereas their position now arguably does the reverse. To a large extent all parties can be seen to have behaved instrumentally in deciding how to respond to territorial dilemmas at Westminster. One of the surprising counter-examples to this partisan instrumentalism is the recent behaviour of Labour rebels, who have sought to restrict the involvement of Scottish MPs when this is clearly at odds with their party's longer

term interests. Even here, though, it was short-term benefit in terms of policy outcomes that underlay their ostensibly constitutional objections.³⁴

We therefore face a more serious English Question at Westminster than applied previously. Moreover, there are complications. Added to the dilemmas of the past is the fact that the nature of the devolution settlement makes this not simply an English Question, but frequently an *English and Welsh* Question, with boundaries often being blurred. In this section we briefly review, in the light of historical evidence as well as current contingencies, the prospects for resolving this question. In particular we consider four different proposals that have been put forward: 'English votes on English laws'; an English parliament; English regional government; or gradualist procedural change at Westminster.

3.1. English votes on English laws

Since the early 1990s the Conservative Party has expressed concerns about the impact of devolution on Westminster, and particularly about the problems of the West Lothian Question. In 1994 Prime Minister John Major suggested that if a Scottish Parliament were created, it

*surely would not be possible for Scottish MPs to come to Westminster and vote on policies affecting health and education in England, Wales and Northern Ireland. To do so would destroy the natural justice that balances our Parliamentary constitution. And what would be the position if some future Labour government had a majority of 10 seats at Westminster, but a majority of 30 seats in Scotland on which their national majority rested? And then suppose those 30 MPs could not vote on some issues at Westminster. What constitutional chaos would flow from that?*³⁵

Box 1: The Territorial Extent of the Higher Education Bill³⁶

- (1) Subject to subsections (2) to (4), this Act extends to England and Wales only.
- (2) The following provisions also extend to Scotland and Northern Ireland –
 - (a) Part 1,
 - (b) section 42,
 - (c) sections 43, 44, 47 and 48, and
 - (d) this section and section 50.
- (3) Subsections (1), (2) and (5) of section 39 also extend to Northern Ireland.
- (4) Any amendment or repeal made by this Act has the same extent within the United Kingdom as the enactment to which it relates.

Once devolution had happened, however, the party began to advocate just that outcome. The proposal of 'English votes on English laws' was made first in a speech by leader William Hague in July 1999, and went on to appear in the party's 2001 manifesto.³⁷ The new

³⁴ As McLean and McMillan (2006) suggest, even Dicey was liable to argue constitutional principle for instrumentalist motives, so it is difficult to expect politicians to behave any better.

³⁵ Conservative Party Press Notice 823/94, 2 December 1994, quoted in Winetrobe (1995).

³⁶ Taken from Part 5 of the Higher Education Bill as introduced in the House of Commons on 8 January 2004.

³⁷ See Russell and Hazell (2000), Masterman and Hazell (2001).

Conservative leader Michael Howard then took up the proposal and expanded on how it would be enacted. Under these arrangements the Speaker would be responsible for certifying bills as not applying to Scotland, and MPs representing Scottish constituencies would be required to abstain.³⁸ As already indicated, public opinion polls show that such a measure has support both north and south of the border.

There are, however, a number of intractable difficulties with this approach, which account for its rejection by all previous authorities that have considered it. As already noted the suggestion was dismissed by the Attorney General in the 1960s, despite the Prime Minister's support; it was also considered unworkable by the Royal Commission on the Constitution (the 'Kilbrandon Commission') in 1973. Tam Dalyell, responsible for reviving the question in the 1970s, believed that such a solution would be 'indefensible' (1977: 250). Gladstone's attempts to implement the 'in and out' solution forced him to conclude that it 'passes the wit of man' (quoted in Bogdanor 2001: 30).

Objections to the idea can be raised at three distinct levels: the technical, the political and the constitutional. The technical barriers begin with legislative drafting: there is often no clear demarcation line between bills that do, and do not, affect particular parts of the UK. Bills may include numerous clauses, some of which have application in one area and some in another. For illustration the 'territorial extent' clause of the 2004 Higher Education Bill is produced in Box 1. Although the main provisions of the Bill would apply only in England and Wales, it also included clauses relating to Scotland and Northern Ireland. Indeed Westminster is legislating for Scotland more than had been envisaged under the 'Sewel' procedure, by which the Scottish Parliament allows Westminster to act on its behalf.³⁹ This increases the number of bills which include Scottish clauses. With respect to Wales, the Higher Education Bill included provisions to allow the Welsh Assembly to introduce top-up fees if it wished, although the Assembly at the time had rejected the proposals. Under an 'in and out' solution this could leave the position of Welsh MPs ambivalent.

Although all bills traditionally include a territorial extent clause, this does not necessarily give a clear indication of a bill's territorial *application*. As England and Wales comprise one legal jurisdiction, even those bills which in practice apply to only one of them – for example the Regional Assemblies (Preparations) Bill and the Health (Wales) Bill in the 2002–3 session – have a technical extent of England and Wales. Therefore, to be clear how voting should be restricted, some new form of certification (as the Conservatives have suggested) would be required. However, even this is not a straightforward matter.

In a united kingdom there are inevitably many cross-border issues. As the Kilbrandon Commission suggested:

*Ability to vote could not depend simply on whether the matter at issue related to a reserved or transferred subject. Any issue at Westminster involving expenditure of public money is of concern to all parts of the United Kingdom since it may directly affect the level of taxation and indirectly influence the level of a region's own expenditure.*⁴⁰

This is particularly the case given that the calculation of the Scottish block grant is based on overall UK spending. In many cases there may also be overt interests, such as where an MP who represents an area near a border has constituents using services on the other side of that border. Returning to the example of the Health and Social Care Act, Part 1, Clause 1(1) stated: 'An NHS foundation trust is a public benefit corporation which is authorised under this Part to provide goods and services for the purposes of the health service in England.' However, the explanatory notes to the Act explicitly acknowledged that this may involve

³⁸ See the House of Commons opposition day debate on this matter on 21 January 2004.

³⁹ For a full account of the Sewel procedure see Winetrobe (2001), Page and Batey (2002).

⁴⁰ Royal Commission (1973: 247); note that 'region' here is used to apply to Scotland, Wales and Northern Ireland.

providing health care in Wales, and the Act thus allowed that constituencies for representation on trust boards may include areas the other side of the Welsh border. Under an 'in and out' arrangement there is thus no clear conclusion to be drawn as to whether Welsh MPs should participate in this area of policy.

In addition to these two direct effects on areas technically not covered by a bill, there may also be indirect effects through policy transfer from one part of the UK to another. For all of these reasons many Scottish MPs have argued that they have interests in English and Welsh legislation. The SNP, which has a policy of not voting on England-only legislation – which the party defines as legislation that has no 'direct or indirect legislative or financial impact on Scotland, Wales or Northern Ireland' (SNP 2003) – did however vote against the foundation hospital and higher education proposals, citing both the funding implications and a belief that these policies would have an adverse effect on the Scots. Tam Dalyell himself, having followed a self-denying ordinance on non-Scottish legislation since 1999, voted on the 2004 Higher Education Bill because of the implications for higher education in Scotland. Robin Cook, having once ruled himself out as a future secretary of state for health, voted on foundation hospitals in 2003.

In addition to technical barriers there are political barriers to the 'in and out' solution. At one level, even if it proved technically possible to isolate clauses that affected one part of the UK or another, this would lead to significantly more votes, with complex whipping arrangements that would almost certainly lead to parliamentary confusion. As one Scottish MP has quipped, it would result in MPs being required to do 'legislative hokey-cokey' on different clauses of bills.⁴¹ And there are other political barriers that make this situation unlikely. While pressure for action comes from Conservatives in England, and from the right-wing Scottish press, it is Labour members in Scotland who would be required to change their behaviour. In the 2001 parliament the Conservatives had one MP in Scotland, Peter Duncan, and he sought to exclude himself from votes on non-Scottish matters. In some of the closest votes this must have been difficult, as his participation could potentially have been enough to defeat the government. The Liberal Democrats, with more Scottish members, maintained the right to participate in all matters at Westminster. Similarly, Conservative members voted in opposition to both the Wales-only bills debated at Westminster in the 2001 parliament, despite the party's total lack of MPs in Wales.⁴² This suggests that behaviour on all sides is driven more by pragmatism than by principle.

At the 2005 election Labour's majority was reduced, but the basic arithmetic remained the same. But if at a future election this majority was reduced further still, and the Conservatives had won additional Scottish seats, the opposition would face a difficult choice. The instrumentalism demonstrated to date by all parties suggests that their current position of abstaining on Scottish votes might not hold in practice. Conservative complaints would be certain to go unheeded by the government, given that a reduced majority would make Labour even more defensive about change than it already is. But Conservative votes could be crucial in bringing about defeats of the government. Meanwhile if the Conservatives gained a UK-wide majority they would have no immediate need to legislate to limit the role of Scottish MPs. They would face a difficult debate about the state of the Union if they chose to do so.

The biggest barriers of all to the 'in and out' solution are, however, constitutional. The solution gives rise to serious questions about the role of MPs as members of the UK parliament and about the nature of the Union itself. The Union has traditionally been built

⁴¹ George Foulkes, HC Debs, 21 January 2004, col. 1394.

⁴² See the second reading of the Children's Commissioner for Wales Bill on 16 January 2001 and the report stage of the Health (Wales) Bill on 9 January 2003.

on an equality whereby all members, as members of a single parliamentary body, can vote on all matters, regardless of the territorial extent of their application. Devolution ended the reciprocity of this arrangement with respect to English and Welsh members' ability to vote on many Scottish matters. Further unravelling of the principle would have profound consequences. Taken to its logical conclusion this would require only MPs from London to have voted on the Greater London Authority Bill, or only MPs from the North East to be entitled to vote on the Bill to create a North East regional assembly. Such a decision (which would amount to legislative devolution to the regions) should be taken consciously as a matter of constitutional principle, rather than be made a matter of short-term political convenience.

At present the tensions between England and the remainder of the UK are limited, as numerically at Westminster England remains a Labour country, albeit less strongly Labour than in 1997 and 2001. The votes of Scottish and Welsh members may be used to boost the government's majority, but on most matters they are unlikely to have a decisive influence. A return to the arithmetic of 1964 or 1974, where Labour is unable to command a majority in parliament without the support of Scottish (or Welsh) MPs, is a more difficult prospect. The Kilbrandon Commission noted: 'A further difficulty would arise if the exclusion of some Members of Parliament from participation in certain issues were to deprive the government of the day of its majority in the House of Commons' (Royal Commission 1973: 247). An 'in and out' solution in these circumstances would result in a government that could control the Commons on reserved matters, but not on matters that had been devolved to Scotland and/or Wales. As government depends on the confidence of the Commons this would readily lead to a constitutional crisis, likely to be averted only if Labour could form a coalition with majority support in England (and/or England and Wales), probably through the support of the Liberal Democrats.⁴³ But this would bring about a profound change to the culture of government in England. While the electors of Scotland and Wales chose devolution, the electors of England (and Wales) were not consulted on whether they wished to accept what amounts to a parliament within a parliament, frequently under coalition control when not controlled by the Conservatives. Again, a change of this magnitude would demand serious reflection, and require a strong indication of consent from the electors of England – which is so far not apparent.

3.2. An English Parliament

Changes to voting conventions would therefore create in effect separate bodies operating within Westminster, subject to distinct coalitions to secure a voting majority. In these circumstances it would be far more transparent and democratic to create an English Parliament, subject to its own elections. This would allow the English a direct choice over who controlled the executive on English matters, while a separate executive, elected for the purpose, would control the UK House of Commons. A complication, of course, is that the current settlement includes many English and Welsh matters. However, an 'English and Welsh Parliament' would create new 'in and out' problems of its own with respect to the Welsh. In order to avoid West Lothian-type problems altogether, an English Parliament, a Welsh Parliament and, presumably, a Northern Irish Parliament would need to have equivalent power to that of the Scottish Parliament – creating a strongly devolved federal state.

The idea of 'home rule all round', with powerful parliaments in all four nations of the UK, was floated during the debates at the end of the nineteenth century. However, this would be a substantial constitutional change. An English Parliament is a model which wins little

⁴³ Indeed, it potentially leads to three different government formations: one to govern England; one England and Wales (the more commonly required); and one to govern the UK.

support among the English. Despite the fledgling Campaign for an English Parliament, in 2003 just 16 per cent of those surveyed supported such a proposal, with these figures showing no upward trend (Curtice 2006). Among English MPs the level of support is even lower, at 13 per cent in 2004.⁴⁴ There are many good reasons to be sceptical about the idea, not least the overwhelming size of the parliament in comparison to its neighbours (representing 84 per cent of the UK population) and therefore its likely clout in the federation.

While the notion of ‘English votes on English laws’ appears to be winning popular support there is no sign yet that the English have an appetite for its logical corollary, an English Parliament. As Lloyd George said when the proposal was made in 1918, ‘unless you have got a substantial majority of the English representatives in favour of it, it is idle to attempt it’ (quoted in Bogdanor 2001: 46). It remains to be seen whether anger at the role of Scots MPs will be enough to drive the English towards such a solution.

3.3. English regional government

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Even given recent setbacks, the prospects are still brighter for English regional government than they are for an English Parliament.⁴⁵ However, like an English Parliament, regionalism cannot promise an end to tensions at Westminster unless this leads to symmetrical *devolution all round*. This would answer the problem of a federation with a dominant England, but appears even less likely. The prospect of devolved government in the regions with legislative powers equivalent to those of the Scottish Parliament is, at best, very distant. Instead the bodies rejected in 2004 would have had significantly weaker powers than the Welsh Assembly. If symmetry with Scotland is ever to be achieved, it seems likely to be the Welsh that get there first, with the English regions far behind.⁴⁶

3.4. Procedural change

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An alternative to the above proposals would be to try to manage the English Question through piecemeal procedural change to existing arrangements at Westminster. Such options were considered by the House of Commons Procedure Committee in 1999 in its report on *The Procedural Consequences of Devolution*, and by a commission established by the Conservative Party in the same year chaired of Professor the Lord Norton of Louth (Procedure Committee 1999; Conservative Party 2000).⁴⁷

The proposals put forward by these bodies drew inspiration from the arrangements that Westminster had put in place for Scotland and Wales prior to devolution. Both reports proposed that bills should be certified by the Speaker as applying to one or other part of the UK and, where these applied to England only, or to England and Wales, they would follow a new procedure. Under the Norton proposals an English/ English-Welsh bill would have its second reading in a Grand Committee, comprising all members from the relevant area. The committee stage would then be taken by a standing committee restricted to members from the area, and the final vote on the bill would be taken in the Commons chamber, with a convention that MPs from other areas did not vote. These proposals therefore amounted to ‘English votes on English laws’ and effectively an English Parliament operating within Westminster.

⁴⁴ Leverhulme-ESRC-funded survey, Constitution Unit. Among English Conservatives support was 28 per cent, but among English Labour MPs support was just 3 per cent. In territorial terms the most supportive group as comprised of Scottish MPs, where 27 per cent backed the idea.

⁴⁵ For discussion see Hazell (2006) and Sandford (2006).

⁴⁶ In March 2004 the Richard Commission recommended primary legislative powers for the Assembly, but there is little immediate prospect of this change being implemented (Richard Commission 2004).

⁴⁷ For more detailed discussion of these proposals see Hazell (2000), Russell and Hazell (2000).

The Procedure Committee recommendations were more cautious, and would have more closely mirrored the arrangements that existed prior to devolution for Scotland and Wales. However, they would have included all of the same tensions. Here the second reading of an English bill would normally be sent to an all-English second reading committee, smaller than that proposed by the Norton Commission. As previously existed with respect to referring Scottish bills to the Scottish Grand Committee, it was proposed that this reference could be easily prevented. An objection by twenty members in the Commons chamber was to be enough to block such a referral. Consequently the second reading of controversial bills – as used to be the case for Scotland – would remain mostly in the chamber. It was then proposed that the committee stage would be taken in a standing committee on which there were at least sixteen English members. Here the normal parliamentary convention that committees must mirror the political balance of the whole House would apply – thus if the balance of English members differed from that in the chamber as a whole, this would not be reflected in the committee’s membership.⁴⁸ Furthermore under the Procedure Committee’s proposals the final stages of the bill would be taken in the chamber itself, with no restrictions on which members could vote.

These two sets of proposals demonstrate the central dilemma of creating territorial bodies within the Westminster parliament, even if the earlier problems of defining the territorial extent of policy were able to be resolved. Such bodies must either reflect the UK balance of parties, thus perpetuating the West Lothian issue, or create distinct English arrangements with competing majorities which would risk perpetually clashing with the Commons chamber.

A gentler solution could be to create less powerful English-only bodies, though these (like the Scottish and Welsh Grand Committees before them) would be open to criticism as ‘talking shops’. The proposal made by the Norton Commission to create an English Grand Committee was not new: similar proposals had been considered in 1911 by Lloyd George as a means of balancing home rule for Ireland, but were not implemented (Hadfield 2003). Similarly, a proposal for ‘Grand Councils’ comprising English, Scottish and Welsh MPs to consider bills affecting each area came out of the Speaker’s Conference on devolution in 1919 (Bogdanor 2001). Such an arrangement had existed for Scotland since 1907 (and intermittently since 1894) and was introduced for Wales in 1960, and later for Northern Ireland. However it was never duplicated for England. The only distinctly English committee created was the Standing Committee on Regional Affairs in 1975. However, although that committee extended membership to all MPs from English seats (plus not more than five others), it focused on matters affecting specific regions (Borthwick 1978). It did not have legislative responsibilities (though in practice, of course, there was, then as now, little English legislation) and could consider only ‘matters’ referred to it by a minister. With this rather unsatisfactory constitution the committee rapidly fell into disuse. It was revived after devolution in 2000 in even more limited form. The new incarnation has just thirteen core members, with other English members able to attend in a non-voting capacity. With a remit similar to that of the old committee, it has attracted little interest and has met only rarely.⁴⁹ To establish an English Grand Committee in its place would be to create a huge body, with some 529 members, which would itself resemble a parliament for England if it had any

⁴⁸ At least arrangements for England would not suffer from some of the problems previously afflicting such territorial committees. In the Scottish case the requirement to match the balance of the whole House meant that the Scottish standing committees sometimes included non-Scottish members during periods of Conservative government. Similarly with respect to Wales the standing order requiring Wales-only bills to be committed to a standing committee comprising only Welsh members was disapplied for the Local Government (Wales) Bill 1994, as the Conservatives did not have enough Welsh members to make such a committee viable (Seaward and Silk 2003). Given the number and diversity of members in England such difficulties would be unlikely to apply.

⁴⁹ See Russell and Hazell 2000, Masterman and Hazell 2001, Gay 2003.

meaningful powers. However, without such powers it is difficult to see how a body of this kind could succeed. This seems to be recognised by English MPs. In our survey in 2004 only 29 per cent of them (and only 15 per cent of English Labour MPs) supported the creation of an English Grand Committee.⁵⁰

Another possibility that has been floated at times, and was given serious consideration most recently by Harold Wilson in 1966, is committees to represent the English regions (Jones and Wilford 1986). Our survey in 2004 found that 41 per cent of English MPs, and a majority of English MPs representing Labour and the Liberal Democrats, would support the introduction of such committees.⁵¹ These would be more manageable than an unwieldy English Grand Committee. While such committees could be genuinely useful for scrutinising the impact of government policy, and even bills, on particular regions, they would not of course meet the central concern over the rights of Scottish members to vote on English and Welsh legislation.

Conclusions

This briefing has demonstrated how it is at Westminster that the English Question has achieved greatest salience, and that this interest is likely only to grow. However, the problems raised are not new, and despite the application of many great minds over more than a century, no adequate solutions have been found. In some respects little at Westminster has changed – Scottish MPs are largely absent from the detailed consideration of English matters, as they were long before devolution. The Welsh and Northern Irish at Westminster (at least when devolution is suspended in Northern Ireland) have more ambivalent relationships with English affairs. However, the presence of a powerful devolved institution in Scotland is likely to fuel future tensions, particularly over voting on legislation, to which there are no simple answers.

The ‘in and out’, or ‘English votes on English laws’, option is one which holds little promise of practical implementation. A formalised English Parliament is, however, not yet desired and has its own practical difficulties. Regionalism is even less likely to provide an adequate solution. Piecemeal procedural change at Westminster remains a possibility. However, this would create frustrations of its own of a kind which, when applied to Scotland and Wales in the past, simply helped fuel demands for devolution outside of parliament.

A completely different solution to the English Question at Westminster would be a change to the voting system for the House of Commons.⁵² A more proportional system would reduce the over-representation of Labour in Scottish and Welsh seats and the probability of (as has applied in the past) over-representation for the Conservative Party in England. This would not completely avoid the danger of competing political majorities in Scotland and England, but the tensions at Westminster would, on many occasions, be diffused. Reform of the voting system remains one element of constitutional reform, however, that Labour has proved unwilling to implement and to which the Conservatives are almost universally opposed.

The final answer to the West Lothian Question may be, as Lord Chancellor Derry Irvine once suggested, ‘to stop asking it’.⁵³ In a constitution full of anomalies, where a party may for example win more House of Commons seats than its rival on fewer votes, but still go on to

⁵⁰ Leverhulme/ESRC funded Constitution Unit survey.

⁵¹ Leverhulme/ESRC funded Constitution Unit survey.

⁵² For discussion see Hazell (2006a), Russell and Hazell (2000).

⁵³ HL Debs, 25 June 1999, col. 1201.

govern undisturbed, such a solution might not be out of the question.⁵⁴ However Conservative interests - instrumental as history may show them to be - seem unlikely to allow this to happen.

⁵⁴ Such a situation applied at both elections in 1910, in 1929, in 1951 and February 1974 (Rallings and Thrasher 2001).

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