Voice and Veto

Answering the West Lothian Question

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SUMMARY

- The West Lothian Question must be answered. At a time of enhanced devolution for other nations within the Union, there should be a clear voice for England. Only in that way can the Union be entrenched.
- While the status quo is untenable, an English Parliament would be unnecessarily disruptive to the Union. It would risk jeopardising, rather than bolstering it. A 'full-strength' version of English Votes for English Laws could run many of the same risks.
- In considering constitutional reform, the temptation to search for neat and symmetrical solutions should be resisted. It is more important that any reform be politically practical, be fair to all the constituent parts of the United Kingdom and, above all, secures widespread consent across the country.
- The recommendations of the 2013 McKay Commission would not offer adequate protection for English interests. In particular, its lack of an ultimate veto power would mean that the English could still have legislation that largely or entirely affects only England imposed on them by a UK majority. This is unacceptable.

- A workable solution must enable English MPs to protect English interests, but also give both the UK government and English MPs an incentive to negotiate and compromise where they differ.
- Two of the proposals in the December 2014 White Paper – Option 2 and Option 3 – meet these criteria. Under the first, both the Public Bill Committee and Report stage of relevant legislation would be 'English only'. The second would require an 'English only' Public Bill Committee, but would instead also require an English Grand Committee to grant the equivalent of a Legislative Consent Motion before the Bill moved to Third Reading.
- Either proposal would be workable. Both deliver an English veto with incentives for compromise and practical politics. However, Option 3 (which proposes an English Grand Committee deciding whether or not to grant a Legislative Consent Motion) would be a stronger demonstration that Parliament was giving English concerns and interests their proper place in its work; on grounds of visibility and hence capacity to secure consent, it is preferable.
- These proposals for change are in a Burkean tradition of prudent and organic reform that has served this country well. That tradition provides us with the resources to handle the unique challenges posed by asymmetric devolution, and to sustain and renew the Union and the institutions that underlie it.

1. INTRODUCTION

It is essential, as the devolution settlement is recast, that the West Lothian Question is now fully answered. To insist on the principle that decisions affecting England (or sometimes England and Wales) should be taken only with the consent of a majority of MPs from that area – what is commonly known as English Votes for English Laws – is not a narrow sectional demand, still less a slogan. It is a statement of the minimum necessary to stabilise the Union in the long term. This paper seeks to identify how this is to be done.

The West Lothian Question must be addressed because, at a time of enhanced devolution for other nations within the Union, there should be a clear voice for England within the political process. Parliament should recognise an English dimension and specific English interests in its work.

However, a voice alone for England is not enough; there must also be mechanisms to protect England's interests and to ensure that England (or, in some circumstances, England and Wales) does not have measures imposed on it that a majority of its MPs do not support. It was on this criterion that the McKay Commission, despite the strength of much of its thinking, fell short of what is needed.

In asserting the need for an entrenched protection for England, there is no need at present to consider creating an English Parliament (with its inevitable concomitant of an English Executive) until less disruptive remedies have been attempted and exhausted. Nor need an English veto be a recipe for gridlock, when there is a government with a UK-wide but not English majority. Mechanisms can and must be devised that will encourage the operation of constructive politics and effective government. This paper examines them; their key feature is that the UK government, as well as an English majority, would have a veto. Both sides would have reason to compromise.

With further devolution to Scotland, epitomised in the party leaders' 'vow' during the independence referendum campaign and the subsequent programme of Lord Smith's commission, the West Lothian Question has ceased to be the province of specialists and has, rightly, become high on the national political agenda. The Prime Minister identified it as a priority in the immediate aftermath of the referendum and a Cabinet Committee chaired by the Leader of the House, William Hague, was charged with bringing forward proposals for change. The White Paper *The Implications of Devolution for England*, published in December, set out several options; we have assessed them here in line with the thinking and criteria described above.

There are workable answers to the West Lothian Question. There is particular merit in proposals that give visibility to the explicitly English dimension of Parliament's work, such as the McKay Commission's call for a parliamentary resolution underwriting the need for English MPs' consent to measures affecting England, and a key role for an English Grand Committee. Such options will not be for the tidy-minded; but they draw on our best traditions of organic reform of existing institutions, and offer the prospect of protecting England's interests while sustaining the Union.

2. THE PROBLEM IN HISTORICAL CONTEXT

There is nothing new about the fundamental principle behind what "*only those with short memories have called… the West Lothian Question*."[1] The problem bedevilled the attempts of successive Liberal governments to introduce Irish Home Rule between 1886 and 1914 and disappeared only when the Irish issue was temporarily resolved by secession and partition. Apart from Harold Wilson's exasperation with the Ulster Unionists' opposition to steel nationalisation in the 1964-66 Parliament, it remained dormant until it earned its name through being constantly raised by Tam Dalyell, the anti-devolution Labour MP for West Lothian, during the debates over Scottish and Welsh devolution in the 1970s. The advent of devolution in the 1990s transformed it from a hypothetical to a real dilemma; the deepening of devolution in the wake of the Scottish independence referendum has put it centre stage.

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[1] Brigid Hadfield, *The Constitution of Northern Ireland*, cited in House of Commons Library Standard Note SN/PC/2586, *The West Lothian Question* (January 2012), p. 5.

'West Lothian' is a widely accepted shorthand for the biggest problem of asymmetric devolution. MPs from parts of the UK with devolved parliaments and governments are able to vote on what are, increasingly, matters affecting only England, the one country without such arrangements. Meanwhile, neither they nor their English counterparts are able to vote on comparable matters affecting Scotland (or, increasingly, Wales, or Northern Ireland), since they are the responsibility of devolved institutions.

This has been recognised as an anomaly and an injustice not only in England, but in Scotland too. Since the early years of devolution, the Scottish Social Attitudes survey has consistently shown around half (usually slightly more than half) of Scots either 'agree' or 'agree strongly' that 'Scottish MPS should no longer be allowed to vote in the UK House of Commons on laws that affect only England', while only a fifth disagree.[2] A number of Scottish MPs, notably from the SNP, have reflected this in their voting behaviour. As the Chancellor of the Exchequer noted recently, "the SNP has been an ally of this principle over many years,"[3] although this may now be changing.

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[2] Scottish Social Attitudes surveys 2000-2013. http://whatscotlandthinks.org/

[3] The Chancellor of the Exchequer, Treasury Select Committee hearing on proposals for further fiscal and economic devolution to Scotland, 20 January 2015.

As has been demonstrated by various reviews, including most recently the McKay Commission constituted by the coalition government, the West Lothian Question has a variety of implications (see box overleaf).[4]

It has been argued that the West Lothian Question has only had practical consequences, whether in terms of government formation or the outcome of individual votes, on very rare but often-cited occasions. It is, however, possible to envisage circumstances in which the practical problem could become much more acute in future. Yet to focus too narrowly on these actual and hypothetical circumstances is to miss much of the point, which is that there should be a voice for England within the political institutions. It is not only that we should ensure that laws affecting England need the consent of a majority of English MPs to be enacted, important though that is. In addition, Parliament should recognise an English dimension and specific English interests in its work. The McKay Commission drew attention to this, while noting that there is very little recognition of this in current practice, even as the House of Commons becomes ever more of a chamber for English business.[5]

From the establishment of devolution onwards, there has been a variety of proposals to address the West Lothian Question through the concept of 'English Votes for English Laws'. Many of them have been associated with the Conservative Party (Labour

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[4] Conservative Party Democracy Task Force, *Answering the Question: Devolution, the West Lothian Question and the Future of the Union* (2008), p. 2; *Report of the Commission on the Consequences of Devolution for the House of Commons* (The McKay Commission) (March 2013), paragraphs 31-37.

[5] McKay Commission, paragraphs 38-41.

has been more hesitant in addressing the issue). In 2000 Lord Norton of Louth's Commission on the Future of Parliament, reporting to the then Conservative Leader William Hague, proposed a *'full-strength'* version of English Votes for English Laws, excluding Scottish MPs from all stages of legislation deemed by the Speaker to be English or English and Welsh in its scope.[6]

West Lothian in practice

The West Lothian Question can be relevant to questions of how a government might be formed when there were sharp differences between the UK-wide party balance and that in England. The most dramatic possibility is that of a single-party government with a UK-wide majority confronting a hostile single-party majority in England. It would then be dependent on 'Scottish votes' to carry its measures (though this common formulation omits Wales, whose less far-reaching form of devolution also needs to be considered).

Such a clear-cut distinction is relatively unlikely in practice. Even during the post-war era of (almost) pure two-party politics, only in one parliament was there a different single-party majority in England from that in the UK as a whole; in 1964-66, there was a Conservative majority in England but a Labour majority UK-wide. On the two other occasions of Labour governments with small UK majorities (1950 and October 1974), the two big parties were deadlocked in England, with neither securing a majority. Whenever Labour has formed a government with a durable working majority, it has also secured a majority of English seats – a point worth recalling when it is argued that addressing the West Lothian Question would keep Labour out of office indefinitely.

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[6] The 'full-strength' terminology is to be found in Robert Hazell, 'The English Question: Can Westminster be a proxy for an English Parliament?', *Public Law*, Summer 2001.

Under our current, more multi-party system, the most 'extreme' outcome seems still less likely. However, what is much more likely is a government that had a UK-wide majority but a position of 'No Overall Control' in England. Perhaps still more likely is that current voting patterns could give rise to sharply different majorities or coalitions in England and UK-wide.

There are other possible implications of various election outcomes between England and the other nations of the United Kingdom. As far back as February 1974, there was a Conservative majority in England, but Labour's strength in Scotland and Wales gave it a small plurality of seats and it formed a minority government. After the 2010 election, the Conservatives had a majority of seats in England, but the results from the rest of the UK ensured the need for a coalition.

The other circumstances under which the West Lothian Question becomes highly salient relate to votes on individual issues. This arose twice during the 2001-05 parliament; in votes on government proposals for foundation hospitals and university tuition fees which affected only English hospitals and English students, the government faced significant revolts from its own side. It had no English majority but secured victory only with the votes of non-English MPs.

In early 2006 David Cameron commissioned Ken Clarke to establish a Democracy Task Force to undertake a systematic review of a number of major constitutional issues, including the post-devolution settlement.[7] The Task Force's report, published in 2008, argued for a modified version of English Votes for

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[7] Andrew Tyrie served as a member of the Democracy Task Force, and Roger Gough was the rapporteur for the group and editor of its reports.

English Laws, with English MPs only taking part in the Committee and Report stages of relevant legislation.

Finally, when the new government was formed in 2010, the issue was highlighted in the coalition agreement, and the McKay Commission was established with a remit to consider "*how the House of Commons might deal with legislation which affects only part of the United Kingdom, following… devolution*" at the start of 2012.[8] The Commission reported in March 2013.

If the Democracy Task Force's report proposed a modified version of 'English Votes for English Laws', the McKay Commission offered further modifications. The Commission acknowledged the importance of the 'English Question', and endorsed a new and more explicit recognition of it through a parliamentary resolution and a menu of procedural options through which English MPs could have a stronger voice on legislation with a 'separate or distinct' effect on England. However, it stopped short of proposing that an English majority should have a legislative veto.

These three proposals – which, with some variants, underlie the options set out in the December 2014 White Paper – are examined in more detail later in this paper. It is striking that, over the period of 15 years from the establishment of the devolved institutions to the publication of the White Paper, arguments for action on West Lothian have moved from the margins to the mainstream. There has also been growing receptiveness to some change in parliamentary procedure.[9] Concomitantly, the

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8 McKay Commission, Foreword by Sir William McKay.

9 Jim Gallagher, *England and the Union: How and Why to Answer the West Lothian Question* (IPPR, April 2012). Reform is also treated sympathetically in Michael Kenny, *The Politics of English Nationhood* (OUP, 2014), especially pp. 211-24.

period has seen a decline in the view that the issue could be ignored and that, since the English represent 84 per cent of the UK population, they can look after themselves and that "*the best way to answer the West Lothian Question is to stop asking it*."[10]

The Scottish independence debate and referendum have made this position untenable. Long before the unionist party leaders' 'vow', the parties were bringing forward proposals for enhancing the powers of the Scottish Parliament, especially with respect to tax-raising powers (which had already been strengthened by the Calman Commission proposals and the Scotland Act 2012). This has since been reflected in the Smith Commission's report. Whatever the merits, or the effectiveness, of the 'vow', it is right that it should be delivered fully and promptly; the credibility of the Union and of the political class have been put at stake by it.

However, further devolution has brought the prospect of the House of Commons becoming ever more focused on English business. The perception that Scotland had extracted further concessions by threatening secession fuelled further demands that England's interests must be protected. The Prime Minister recognised this when, in his remarks after the referendum result was confirmed, he committed the Conservative Party not just to honouring the 'vow' but also to addressing the West Lothian Question.

While the impact of the referendum has been decisive, other developments in recent years have added to the pressure for change or have reduced the obstacles to it.

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[10] Democracy Task Force, p.2. The original phrase is attributed to Lord Irvine. Professor Vernon Bogdanor has also been a proponent of the view that it would be more destabilising to address the West Lothian Question than to accept its anomalies.

Firstly, it has become clear that an English sense of grievance is an increasingly important factor in political debate, and one marked by the belief that devolution and the threat of independence have given Scotland a privileged position at England's expense. The most dramatic picture of this came from the Future of England Survey, carried out by researchers at the Institute for Public Policy Research (IPPR),[11] Cardiff University and the University of Edinburgh. This found increases in English alienation, especially after 2007, manifested in a growing sense of English rather than British identity; a linkage of this sense of identity to a wish to see England recognised more explicitly within the UK's constitutional structures; and a distrust of the UK government and parliament's willingness to represent English interests.

Some of these findings have been disputed, with researchers at the British Social Attitudes Survey finding little upsurge in a sense of Englishness (and much of that taking place in the years just before devolution). However, there is general agreement that English feeling on two specific issues – Scotland's share of public spending and the ability of Scottish MPs to vote on matters affecting England – has strengthened in recent years.

Those who believed that Scotland gets a 'more than fair share' of public spending rose from a little over 20 per cent in the early years of the new century to more than half by 2012. Those who agreed that 'Scottish MPs should not be allowed to vote on English matters' rose from 63 per cent in 2000 to 81 per cent in 2012. Still more strikingly, the proportion of those who strongly

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[11] Richard Wyn Jones, Guy Lodge, Alisa Henderson and Daniel Wincott, *The Dog That Finally Barked: England as an emerging political community* (IPPR, January 2012); Wyn Jones et al, *England and its Two Unions: The anatomy of a nation and its discontents* (IPPR, July 2013).

agreed with this view more than trebled over the same period, reaching 55 per cent in 2012.[12] The 2014 Future of England Survey confirmed strong and growing support for English Votes for English Laws.[13]

Secondly, there has been a significant strengthening of devolution in Wales. In the early years of devolution Wales represented an awkward half way house, part of a single legal system with England, with a devolved assembly but no legislative powers. Talk of English Votes for English Laws and the debarring of Scottish MPs from voting on English matters sidestepped the question of the status of Wales and of Welsh MPs. The McKay Commission recognised the issue in its report, speaking carefully throughout of legislation affecting 'England (or England-and-Wales)'.

However, the Government of Wales Act 2006 set a policy direction towards fuller Welsh devolution. Subsequently the referendum of March 2011 approved the devolution of primary legislative powers in 20 policy areas (albeit with exceptions, and on a 'conferred powers' model rather than the 'reserved powers' model applied in Scotland and Northern Ireland). The Silk Commission, established in October 2011, proposed in its first report (November 2012) significant financial devolution; most of its proposals were accepted by the UK government and are

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[12] See, for example, Beth Foley, *Scotland and the United Kingdom: A Conference Report* (British Academy Policy Centre and Royal Society of Edinburgh, 2012), pp. 20-1; IPPR, *England's Two Unions*, pp. 9-10; Michael Kenny, *The Politics of English Nationhood*, pp. 80-92.

[13] 'English Votes on English Laws: The English Constitutional Preference?', post by Charlie Jeffery and Richard Wyn Jones, *What Scotland Think*s, 15 October 2014, http://blog.whatscotlandthinks.org/2014/10/english-votes-english-laws-english-constitutional-preference.

embodied in the Wales Act 2014. The Commission's second report (March 2014) recommended a shift to the reserved powers model, as well as devolution in areas such as policing, transport, youth justice and energy planning, as well as enhanced and more codified intergovernmental relations.

All this means that, while the National Assembly for Wales still lags the other devolved institutions in terms of the nature and scope of its powers, the trend is for its role to be enhanced. Consequently, while there will still for some time be a significant amount of 'England and Wales' legislation, the England-only element is likely to grow as Welsh devolution is strengthened. Thus, in this paper we will on occasion speak of votes on English matters with the understanding that, in a significant but diminishing number of cases these may be English and Welsh matters.

Thirdly, one of the arguments made against any proposals for English Votes for English Laws was the alleged difficulty of defining what 'English' legislation is. While not fully resolving the issue, the practice of setting out the territorial extent of Bill has been an important step forward and recent years have seen a strengthening of the provision of information about this.[14]

The White Paper, *The Implications of Devolution for England*, published just before the Christmas recess, set out (in addition to discussing decentralisation within England) detailed options for addressing the West Lothian Question. However, before examining those options in detail, there are some apparently plausible but unattractive options for addressing the problem of asymmetric devolution that must be examined.

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[14] McKay Commission, paragraphs 191-95.

3. SOME FALSE TRAILS

As the British constitution is recast following the Scottish referendum, "*the question of English Votes for English Laws – the so-called West Lothian Question – requires a decisive answer*."[15] The Prime Minister is right to insist on this. However, in providing that answer, we have to guard against providing the wrong one.

3.1 Federal UK: unprecedented and unnecessary

One major risk is a form of rationalism that responds to asymmetric devolution by insisting on absolute symmetry, a form of constitutional correctness. This argument is cast in terms of simplicity and justice for England: what the Scots, the Northern Irish and (increasingly) the Welsh have, the English should also have.

The logic of this takes us to an English Parliament, with its inevitable concomitant of an English Executive, presumably within a fully federal UK. This is attractively tidy and apparently

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[15] The Prime Minister, statement following the Scottish independence referendum, Downing Street, 19 September 2014.

logical, but such radical constitutional change could not be enacted quickly and would almost certainly require a referendum. It suffers from two further severe flaws.

First, there is the sheer size of England, making up 53.9 million (84.1 per cent) out of the UK population of 64.1 million, according to latest estimates for mid-2013.[16] No contemporary or historical precedent for a successful federation with one part of it so predominant exists. Even Prussia, in the very different political system of Wilhelmine Germany, made up only around 60 per cent of the total.

Secondly, and still more importantly, the powers devolved to Scotland under the Blair government's model of devolution were exceptionally wide-ranging. For example, they leave Westminster with little role in health and none in education. Devolution in Northern Ireland has been similarly wide-ranging, though not identical, and Wales is starting to catch up.

When these two factors are combined, it is clear that the United Kingdom would find it difficult if not impossible to operate as a workable federation in the way that countries such as Canada, Australia and Germany do. Under these new structures a British government would be a weak and marginal player in domestic policy, above all in comparison to the English government.

Such a weak centre would be unlikely to hold. There is a high risk that the Union could be jeopardised rather than entrenched.

It would also be difficult if not impossible to deliver the 'full strength' version of English Votes for English Laws – with English MPs only voting at every stage up to and including Third

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[16] ONS release, 26 June 2014.

Reading – without similar consequences to those of an English Parliament and Executive. In practice, it is highly likely that the one would shade into the other.

The issue would arise were a UK government of one party (or a coalition) to be confronted with a House of Commons majority of English MPs of another party or parties. In systems characterised by a separation of powers, this might be considered part of normal politics. In the British system, with its tight linkages between executive and legislature and the central importance of a government's ability to carry its programme through Parliament, this deadlock would be new and arguably dangerous territory. With no equivalent of a presidential veto, and thus no incentive for a hostile Commons majority to compromise, ministers and the executive could be dictated to by the (English) legislature. The eventual consequence would be likely to be ministerial impotence and incoherent government, or – more likely – the emergence of an English executive, with its attendant risks of the eventual fragmentation of the Union.

We do not need to take these risks. There is a Conservative and indeed a broader British approach to institution-building on which we can rely. As Burke put it, "Politics ought not to be adjusted to human reasonings but to human nature." It is this approach of organic reform and innovation that preserves and renews existing institutions, not a tidy-minded rationalism, that should govern the form in which English Votes for English Laws is implemented.

3.2 The limits of English decentralisation

Devolution or decentralisation within England has sometimes been put forward as an alternative to English Votes for English Laws. In the early years of the Labour government it was linked to regional structures. But Labour has lost its enthusiasm for regions. Current proposals from all the major parties focus more on local

government, often working through combined authorities, and local communities. English decentralisation does not pose the threat to the Union of proposals for an English Parliament; but neither, whatever its other merits, does it answer the West Lothian Question. The White Paper does not propose it as such a solution, but instead treats it as a separate part of a framework for better governance, reflected in somewhat different proposals from the two coalition parties.

This is mainly because the West Lothian Question is a problem for England as a whole, and for its relationship to the other nations of the United Kingdom. In addition, however, the range of powers devolved to Scotland in 1998-99 is as much a stumbling block to English decentralisation as a solution to the West Lothian Question as it is to the concept of a federal UK. Any form of symmetric devolution would take central government largely or entirely out of vast swathes of domestic policy in England, without it having the legislative or strategic and co-ordinating role of central governments in established federal systems.

As the Democracy Task Force report put it: "*Even if we leave aside the obvious artificiality of regional structures within England, the powers that advocates such as John Prescott proposed for regional assemblies came nowhere near those enjoyed by the Welsh assembly, let alone the Scottish Parliament... the government does not propose [regional structures] as an answer to the West Lothian Question. The same goes for local government; there are strong arguments for decentralisation within England, but not even the most convinced localist is likely to argue for high levels of legislative autonomy for county and unitary authorities.*"[17]

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[17] Democracy Task Force, p. 3.

3.3 McKay: voice but not veto

Another favoured solution has been to adopt the proposals of the McKay Commission. While there is plenty to commend in the Commission's approach, many of McKay's advocates fail to grasp that what he offers is, for the most part, a menu of options, rather than firm proposals for action. The report is strong on voice for England but not on veto. It fails to provide mechanisms to ensure that England (or, in some circumstances, England and Wales) does not have measures foisted on it that a majority of its MP do not support. In this, the report's recommendations – as it implicitly acknowledges – fall decisively short of what can reasonably be described as English Votes for English Laws.

One of McKay's most positive proposals was for the House of Commons to adopt a resolution stating that, as a normal course of business, decisions relating to England (or in some cases England and Wales) should be taken only with the consent of a majority of MPs from that area. This has the merit of visibility and symbolic importance, complementing the more technical changes to legislative procedure that are less likely to command wider public attention.

The McKay Commission also set out its own approach to the thorny question of the definition of 'English' legislation. The Democracy Task Force had noted the growing practice of applying territorial extent to Bills, and McKay recommended that this practice be extended and embedded, in particular by making it regular practice to record territorial extent in the Long Title of the Bill. It also set out a test of whether or not a Bill would have a 'separate and distinct' effect on England (or England and

Wales) as a criterion for whether additional parliamentary procedures should be applied.[18]

This is a useful and important test, but the Commission also believed that the adoption of the parliamentary resolution, combined with its acceptance in government drafting practice, would be sufficient to ensure that Bills, or clauses within Bills, were given appropriate territorial definition. Earlier reform proposals had focused on certification of the territorial application of a Bill by the Speaker. This still seems necessary. The objection that it could draw the Speaker into political controversy needs careful consideration, but can best be met by closely linking any decisions to the original parliamentary resolution and by a measure of transparency about the advice on which the Speaker would rely in making a decision.

Having set out its core proposal of a principle embodied in a parliamentary resolution, the Commission proposed (without necessarily endorsing them) a menu of options to give it substance. Some of these are relatively incremental and uncontroversial:

- The use where possible of pre-legislative scrutiny by a committee replicating the party balance in England (or England and Wales), though the Commission recognised that "*while… useful and practicable, it cannot be expected to be a complete answer*".[19]
- The mimicking of the use of Legislative Consent Motions (LCMs) by the devolved legislatures through an English (or

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[18] McKay Commission, paragraphs 133, 191-94; Democracy Task Force, p. 3.

[19] McKay Commission, paragraph 203.

English and Welsh) Grand Committee to consider legislation making separate and distinct provision for the relevant area. This could ensure that the view of English MPs was clearly established before Second Reading, though any resolutions of the Grand Committee that were hostile to the government bill could still be overruled by the government's UK-wide majority. Alternatively, the whole House could debate an LCM, with the votes of English (or English and Welsh) MPs recorded separately or even taken to represent the view of the House as a whole.

However, once we move beyond these two proposals, decisions about core parliamentary processes, and above all the question of who votes on what, are much more exacting. The Commission rightly rejected the idea that a parliamentary resolution, buttressed by the political cost to a government of overriding it, would be enough. "*We do not think it would be regarded as sufficient in England to assert the principle and to allow politics to do the rest.... Changes to procedural rules can shift the balance in favour of securing adherence to the constitutional principle. We think such a shift is necessary*."[20]

Nonetheless, the Commission was sensitive – too sensitive – to concerns about 'legislative hokey-cokey' that would create 'two classes of MP'. It felt that MPs from all parts of the UK should have the opportunity to consider not only the principle but the detail of legislation, not least because "changes to the detail are likely to be the most frequent means by which compromises about competing interests can be achieved."[21] Its emphasis was

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[20] McKay Commission, paragraph 145.

[21] McKay Commission, paragraphs 147-48; the phrase 'legislative hokey-cokey' is attributed to Lord Foulkes of Cumnock.

on what it saw as a positive concept – that of establishing a voice for England, or England and Wales – rather than the negative one of preventing some MPs from voting on particular issues. "We are envisaging additional roles for some MPs while retaining prerogatives for all MPs." Finally, it also held that a UK-wide majority should in the last analysis be able to prevail, not least to ensure the government's accountability for decisions made during its term of office.[22]

This thinking led the Commission to cautious conclusions. While it argued that, for the Committee stage of relevant legislation, the Public Bill Committee should reflect the party balance in England (or England and Wales) and be made up of MPs predominantly from the relevant area, it left the UK-wide majority able to reverse any Committee amendments at Report stage.[23] In other words the English majority could be outvoted. This was the Commission's key point of difference from the Democracy Task Force, which had recommended that the English party balance be applied to both the Committee and the Report stages.

The Commission nonetheless recommended – with an air of slight trepidation – consideration of two mechanisms for ensuring that the English voice was heard at the Report stage. The first would see the constitution of a Report Committee with a party balance reflecting that in England. However, if its amendments proved unacceptable to the UK majority, ministers could recommit the disputed parts of the Bill to a Committee of the whole House and get their way. Alternatively, after a Report

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[22] McKay Commission, paragraphs 184, 150.

[23] The Commission (paragraph 20) believed this to be "*the minimum needed*" to give England a voice.

stage on the floor of the House, a motion could be moved to recommit the Bill to a Report Committee with an English party balance. This would consider changes made at Report stage that had a separate and distinct effect on England, and for which there had not been an English majority. However, there would then be a limited second Report stage on the floor, at which the UK majority could reassert its view and overrule the English majority in Committee.[24]

The Commission apparently hoped that governments would be unlikely to override English opinion often, since the price would be high not only in political terms but also in legislative time. Nonetheless, a government with a UK-wide but not an English majority would still have the last word on matters affecting England. The Commission recognised "that rejecting an ultimate veto for the majority from England (or England-and-Wales) on either the principle or the detail of legislation may limit the extent to which our proposals can assuage English concerns", while believing that the balance of argument favoured its approach.[25]

The McKay proposals, while subtle and carefully argued, fail to give sufficiently robust defence of English (or English and Welsh) interests, and are unacceptably weak. It is striking that the authors of the White Paper seem to have come to the same conclusion about the importance of a veto, since that is incorporated in all of the options it presents.

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[24] McKay Commission, paragraphs 231-35.

[25] McKay Commission, paragraph 152.

4. THE WHITE PAPER

In the White Paper, the coalition parties set out four options for tackling the West Lothian Question: three from the Conservatives, and one from the Liberal Democrats. The former will be considered first, since the Liberal Democrat variant differs chiefly by advocating a form of ersatz Proportional Representation for England. What all have in common is that they ensure an English veto.

4.1 The Conservative options

The Conservative Party presents three options. The first two reflect the Commission to Strengthen Parliament (Norton) and Democracy Task Force (Clarke) proposals; the third builds on the McKay Commission, though it represents an important strengthening of the latter and introduces a significant role for Legislative Consent Motions (LCMs).

The three options are compared and set out overleaf.

The White Paper: Conservative Party Options

	Second Reading	Committee	Report	Additional	Third Reading	Other
Option 1: **Reformed consideration of Bills at all stages**	Grand Committee of English/ English & Welsh MPs	English/ English & Welsh MPs reflecting party strength in relevant nation(s)	English/ English & Welsh MPs	N/A	English/ English & Welsh MPs	Bills to be certified by Speaker as applying to a particular part of the UK. Convention that MPs from other nations do not vote at Report and Third Reading Parallel process for different parts of Bills that include both devolved and reserved items
Option 2: **Reformed amending stages of Bills**	All MPs	English/English & Welsh MPs reflecting party strength in relevant nation(s)	English/ English & Welsh MPs	N/A	All MPs	Bills to be certified by Speaker as applying to a particular part of the UK
Option 3: **Reformed Committee Stage and Legislative Consent Motions**	All MPs	English/ English & Welsh MPs reflecting party strength in relevant nation(s)	All MPs	Grand Committee of English/English & Welsh MPs to vote on a Legislative Consent Motion	All MPs	Bills to go to Third Reading only if Grand Committee approves Legislative Consent Motion Two other variants proposed (LCM before Second Reading, 'double majority' requirement) Procedure to apply to whole Bills, or English/English & Welsh parts of Bills

Source: The Implications of Devolution for England, pp. 25-7

Option 1 is a 'full strength' application of English Votes for English Laws, which would put a hostile English majority in the Commons in a very powerful position in relation to an executive based on a different, UK-wide majority.

Option 2 seeks to avoid this outcome. In advocating it, the Democracy Task Force noted that, "*The United Kingdom was traditionally a unitary state without a formal executive-legislative separation of powers*." This structure had now been modified without a move to full federalism; this, coupled with the relative size of England, resulted in the need for distinctive solutions.[26]

The key to Option 2 is that it provides a 'double veto', giving both sides an incentive to compromise when the government does not have a majority in England. It combines England-only Committee and Report stages (at which the Bill can be amended) with all MPs voting at Third Reading. Since no amendments are possible at this stage, the government party or parties would have to accept any amendments made in Committee or at Report or vote down the Bill, losing the legislation entirely. With the last word at Report Stage resting with the English majority, no measures could be forced on England against the will of a majority of its MPs, but equally "*by its ability to reject any legislation which contained unacceptable amendments passed at the Committee and Report stages, the UK government would be able to protect its interests by something very similar to a presidential veto*."[27]

Option 3 is similar to Option 2 in that it gives English (or English and Welsh) MPs a veto, but without excluding MPs from other

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[26] Democracy Task Force, p. 5.

[27] Democracy Task Force, p. 1.

nations of the UK from all of the legislative process. However, it differs in introducing a new stage to law-making, and makes distinctive use of the mechanisms of a Grand Committee and Legislative Consent Motions.[28]

4.2 The role of Legislative Consent Motions

Legislative Consent Motions – known earlier as Sewel Motions, after the junior Scottish minister who first stated the convention underlying them in the House of Lords during the passage of the Scotland Act – have been an informal but significant part of the devolution settlement. They are the mechanism by which the Scottish Parliament (or one of the other devolved institutions) consents to Westminster legislating for a devolved policy area.

The Sewel principle established that Westminster would not normally legislate for a devolved policy area unless the relevant devolved institution had passed an LCM agreeing that this should happen. Until now this has been only a convention, albeit one that has been observed with very occasional disputes as to its application to specific issues.

As already described, the McKay Commission proposed two options, one involving an English (or English and Welsh) Grand Committee, for 'a parallel' to LCMs. These would take place before Second Reading and, while they could undoubtedly establish an English (or English and Welsh) view on the

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[28] As with many aspects of this debate, there are historical precedents for the current interest in Grand Committees; the 1919 Speaker's Conference on Devolution proposed 'Grand Councils' of English, Scottish and Welsh MPs to consider Bills for their parts of the UK, though this was not implemented. Standard Note *The West Lothian Question*, p. 5.

proposed legislation, this could be overturned subsequently by a UK-wide majority.

The concept of an English Grand Committee setting out its view before Second Reading, buttressed by a convention that the House as a whole would not normally overturn it, was also central to Sir Malcolm Rifkind's proposals (the 'East Lothian Answer') in 2007 and in his submission to the McKay Commission.[29]

On the basis of the existing mix of law and convention, it is unclear how much force a requirement for an English LCM would have. The Sewel Convention has been honoured, but this reflected the reality of three functioning parliaments or assemblies, their existence validated by referendums, and in one case a credible secessionist threat. Whether governments would feel the same obligation to a less formally constituted English body was and is very much less clear.

However, as the White Paper notes, the Smith Commission has proposed that, as part of the post-referendum settlement, the Sewel Convention should be given statutory force. Option 3 proposes that the need to secure an LCM from the English Grand Committee should have the same statutory force.[30]

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[29] Michael Settle, "Rifkind's Answer to the West Lothian Question", *Herald*, 2 October 2007. In his submission to McKay, Sir Malcolm advocated a double majority system as an alternative. That he envisaged the Grand Committee stage coming before Second Reading is indicated in his response to the Democracy Task Force proposals.

[30] *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, (November 2014) paragraph 22; White Paper, *The Implications of Devolution for England*, (Cm 8969, December 2014), p. 24.

The Conservative submission concludes by suggesting, rather briefly, two variants on Option 3. One is that the Grand Committee stage might take place before Second Reading rather than before Third Reading; in other words, early in a Bill's passage rather than towards the end. Alternatively, the 'double majority' system could be applied, with a relevant Bill needing a majority of English (or English and Welsh) MPs' support as well as a UK-wide majority to pass.

4.3 The Liberal Democrat proposals

In addition to the three Conservative options, the Liberal Democrats also put forward proposals in the White Paper. There is a big focus on decentralisation as a means by which the scope of the West Lothian Question is reduced. Nonetheless, the party "*recognise[s] that even with widespread devolution within England there potentially remain outstanding anomalies with the existing legislative process…. The so called "West Lothian Question" can no longer go unanswered*."[31]

At this point, it is perhaps unsurprising that the concept of 'fair votes' makes its appearance. The Liberal Democrat proposal is that any English Grand Committee stage of legislation should comprise MPs in proportion to the parties' share of votes in England rather than the seats that they have secured.

It is hard to see the justification for this. The Liberal Democrat proposal argues that devolution outside England, as well as the establishment of the London Mayor and Assembly, have been accompanied by electoral reform. Yet Westminster operates under First Past the Post. This is well established and understood by the electorate, and it secures a high degree of

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[31] White Paper, pp. 28-30.

consent. The electorate decisively rejected proposals for change in a referendum in 2011.[32] The rest of the legislative process, involving MPs from both within and outside England, would still reflect the outcomes of First Past the Post.

In addition, under these proposals a Grand Committee in the strict sense of all MPs from England, or England and Wales, would be impossible since some would have to be excluded in the interests of proportionality. This is Proportional Representation by the back door, and selectively and inappropriately applied. Its effect of excluding some English and Welsh MPs renders it wholly unacceptable.

In other respects the Liberal Democrat proposal bears some resemblance to Option 3. MPs on the proposed Grand Committee would undertake "*a new parliamentary stage before third reading or equivalent*", during which they could "*scrutinise proposals and… employ a veto if they so wish*." Unlike Option 3, however, the additional parliamentary stage would not be accompanied by any changes to the Public Bill Committee stage, and it is not clear what scope this leaves an English majority (however constituted) for amendment rather than veto. Rather, the proposal is justified in terms of a 'double lock' – the need to secure an English as well as a UK-wide majority.

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[32] In the referendum of 5 May 2011, a proposal to introduce the Alternative Vote (AV) for parliamentary elections was rejected by 67.9 per cent to 32.1 per cent. Turnout was 42.2 per cent.

5. THE WAY AHEAD

In assessing proposals to protect English interests within a new devolution settlement, the need to deliver a veto as well as a voice for England is crucial. All four proposals in the White Paper – three from the Conservatives and one from the Liberal Democrats – deliver on that principle. That is very encouraging.

However, if the new settlement is to work effectively that veto power should not be a formula for gridlock and stasis, an eighteenth century Polish Parliament writ large. In assessing the relative merits of each proposal, we should judge them by the degree to which they minimise the scope for gridlock and maximise the opportunity for constructive politics, while ensuring an English veto.

In addressing earlier debates on the West Lothian Question, Lord Hurd remarked: "*The government of the United Kingdom would have to ensure that its English measures were acceptable to enough English MPs – or else not put them forward. There would be nothing extraordinary in this process; it is called politics*."[33] In

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[33] Lord Hurd, *Financial Times*, 24 November 2000, cited in Hazell, *"The English Question*".

recent years, politics less inimical to that approach has developed. The coalition is an example, as is a measure of cross-party backbench cooperation in the steady revival of the Commons, not least through strengthened Select Committees, as well as the increasing independence, even rebelliousness, of new MPs. More of this could be expected under new parliamentary arrangements, and not only when there are differing majorities in England and UK-wide. For example, a government with a smaller majority for English legislation compared to that for UK legislation might well find itself under pressure from MPs within the cohort in which it had the slimmer majority and would feel the need to bargain with them.

The dynamics of the House of Commons would be affected, perhaps considerably. So would political discourse within the parties. The more that this new style of politics is reflected in a measure of independence by backbenchers, the greater the acceptance of a need to negotiate by the parties. The more that the electorate is able to see these developments, the more likely it is that consent can be secured for the outcomes of the political process. The pressure for the coalition in 2010 came not only from the financial crisis, nor from the electoral arithmetic, nor only from expediency. It also derived from the judgement of politicians that the electorate might find this appealing. Likewise, there is overwhelming evidence that the electorate finds independence in its MPs attractive, even if at the same time it still punishes split parties.

How far do the different proposals give differently constituted majorities the incentive to strengthen the Union with bargaining and compromise, and to practice this sort of politics?

5.1 Narrowing down the Options

Applying these criteria rules out Option 1. As a 'full-strength' version of English Votes for English Laws, it would take the country a long way towards the creation of an English Parliament.[34] It would give an English majority little incentive to compromise with a government of a different complexion. As the White Paper notes, the proposal has the merits of simplicity and avoidance of the need for new parliamentary procedures, but these are outweighed by the risks it could pose to the Union.

Equally, it is unclear whether proposals for a 'double majority' or 'double lock' provide the right framework or incentives. The McKay Commission was sceptical:

"*Applying the double-lock to a vote on the principle of a bill would leave no room for going back by way of negotiation. Applying the double-lock to every vote on the detail (which would, in theory, allow more room for negotiation and compromise) would seem to us to be quite impracticable*."[35]

This line of argument also works against another variant on Option 3, under which the Grand Committee/LCM stage would be taken early in the legislative process, before Second Reading. This would present an English majority with a limited choice: either to accept or reject the government's proposal, with no scope for amendment.

By contrast, the original version of Option 3 places this stage after an English majority has been able to make amendments at the Public Bill Committee stage, and the UK-wide majority has

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[34] The arguments against an English Parliament are set out in Chapter 3.1.

[35] McKay Commission, paragraph 189.

had the chance to review these at Report. The Grand Committee would come only after a process of discussion and negotiation, which would inevitably be influenced by the knowledge that the Grand Committee stage was still to come.

At first glance, it might be concluded that there would be little difference in practice between these two approaches to the Grand Committee outlined in Option 3, and its variant. This conclusion is mistaken. It is true that the government would be very aware that the Grand Committee would be considering the legislation – and potentially wielding its veto – at an early stage in the Bill's progress, and there would be scope for negotiation at this point. But all legislative practice points to the need for negotiations to take place later in the process, not least because it is only during the scrutiny of the Bill that the merits and shortcomings of the measure, and of each clause, can be exposed. A compromise agreement is far more likely to be hammered out in the course of the Bill's passage, in particular through amendments, than by agreement achieved almost at the start of the process.

In any case, it is during the legislative process that consent from the English electorate is most likely to be capable of mobilisation. A vote at the start could increase the risk of gridlock and decrease the likelihood of securing consent. Anything which increases the scope for negotiation at the later stages of a Bill's consideration would have merit.[36]

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[36] There may also be a case for the formalisation of a procedure whereby the House – of all MPs – refers the Bill back to the English only committee, a form of intra-House of Commons ping pong.

This leaves two possibilities: Option 2 (the Democracy Task Force proposal) and the most fully developed version of Option 3, with the additional Grand Committee stage coming between Report and Third Reading.

The two options are similar. Both deliver an English veto but also an incentive to compromise. The only difference between the two is that under Option 2 both the Public Bill Committee stage and Report stage would be English only, whereas Option 3 would keep the Report stage as the province of all MPs but would add in an extra stage, that of the English Grand Committee, between Report and Third Reading.

On what basis might an English Report stage or an English Grand Committee be preferable? It is in many respects a trade-off between simplicity and visibility.

5.2 Visibility and consent

As mentioned in an earlier section, one of the most attractive recommendations of the McKay Commission was for a parliamentary resolution establishing the principle that decisions relating to England (or England and Wales) should only be made with the consent of a majority of MPs from that area. Such a resolution should be passed, providing the framework and starting point for detailed procedural changes.

The great merit of the proposed resolution is its visibility. One of the concerns that even sympathetic critics have raised regarding proposals to address the West Lothian Question is that they are a highly technical and specialist response to what can be a very visceral issue. Will the English sense of grievance really be salved by changes to the composition of Public Bill Committees?

There is some validity to this argument, and it applies to any change to parliamentary procedure. However, it is possible for such changes to have greater or lesser degrees of visibility and hence impact on public opinion. The parliamentary resolution favoured by McKay would be a public declaration of intent. It would be clearly visible and likely to be readily understood by the English electorate. Similarly, an English Grand Committee making the decision whether or not to grant a Legislative Consent Motion would be a vivid demonstration that Parliament was giving English concerns and interests their proper place in its work. Unlike the resolution, it would also be a frequent part of parliamentary business rather than a one-off, albeit important declaration.

This comes, admittedly, at the price of slightly greater complexity. Option 2 does not require any additional stages to legislation.[37] The Grand Committee in Option 3 is an additional phase. However, it could be argued that this is a price worth paying for a more visible English phase of the process, and also that the interaction between the Public Bill Committee stage (English only), Report (all MPs) and the final decision on an LCM by the English Grand Committee could provide opportunities for negotiation and resolution. Notwithstanding the parliamentary complexity, the simplicity and clarity to a wider public of a motion requiring consent for legislation – the LCM – is an important attraction.

The authors had a hand in devising Option 2 and so might be expected to prefer it over other options in the White Paper. It is certainly superior to the 'full strength' English Votes for English

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[37] Though it does, of course, change who participates in the Public Bill and Report stages.

Laws set out in Option 1, or to the two variants on Option 3, the double lock and an English Grand Committee at Second Reading. However, Option 2 and the fully developed version of Option 3, with the English Grand Committee after the report stage, are remarkably similar in their spirit and in many of their details. Both provide the essential framework for compromise. Either could be workable. On grounds of visibility and hence capacity to secure consent – and by the shortest of short heads – Option 3 with the English Grand Committee may be preferable.[38]

5.3 The procedural reform agenda

Establishing workable procedures for primary legislation in the Commons is essential, but it will force the need to consider other procedural issues, some possible solutions to which are sketched out at this point.

One is secondary legislation. In almost all cases, Statutory Instruments are not subject to amendment but only to approval or annulment, whether under affirmative or negative procedures. So far in 2014-15 there have been 267 affirmative resolutions, of which 233 were subject to debate, mostly in Delegated Legislation Committees (DLCs). There have been 882 negative resolutions, of which two have been subject to debate, one on the floor of the House and one in a DLC. Very few Statutory Instruments trigger divisions.

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[38] The White Paper also suggested (p.26) that the Grand Committee could tackle other English issues, such as the distribution of funding to local government and the police, or additional questions to Ministers with England-only departmental responsibilities. There is merit in exploring this further.

The McKay Commission considered secondary legislation. It proposed applying a similar approach to that which it had proposed for primary legislation. With regard to negative procedures for Statutory Instruments that had a 'separate and distinct' impact in England or England and Wales, it proposed that the DLC considering the Instrument should be constituted on the basis of the relevant party balance. However, the Instrument could then be debated on the floor of the House, where the UK-wide majority would apply. With regard to affirmative procedures, debate (and presumably votes where these took place) in DLC would be on England or England and Wales lines when appropriate, though the final decision (without further debate) on the floor of the House would be UK-wide. Where debate did take place on the floor, a double count would be applied and, where there was no English or English and Welsh majority, it would be referred back to an appropriately constituted DLC. Once more, however, after this the substantive motion would go back to the House.[39]

It is possible that, in contrast to the position regarding primary legislation, the McKay proposals would be sufficient for secondary legislation, or even that no formal changes to procedures would be needed. There are few divisions on Statutory Instruments, and they gain their authority from primary legislation that has already gone through procedures designed to protect English interests. It is more likely that this will prove unacceptable. It would probably then be necessary to apply a binding double lock, with the Statutory Instrument needing to secure both UK-wide and English, or English and Welsh majorities. This more cumbersome, but comprehensive,

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[39] McKay Commission, paragraphs 241-247.

protection – or something similar – is almost certain to be required to prevent the use of secondary legislation as a vehicle for avoiding the need to secure English and Welsh consent to primary legislation.

The role of the House of Lords also generates knotty problems. As long as the Lords broadly retains its current composition and does not become an elected body, then it is not necessary to reconsider the role of non-English peers regarding English legislation, since they do not serve in the legislature as territorial representatives. However, Lords amendments to legislation with a 'separate and distinct' impact on England, or England and Wales, do raise West Lothian Questions. McKay proposed that such amendments should be sent to a Commons committee with the appropriate party balance, though once more this would secure only an English voice in the process: the committee's resolutions could be overturned by the government through a UK-wide majority on the floor of the House.[40] This is unacceptable, and full English consent would need to be secured to any Commons response to Lords amendments. This could be through a double lock or Grand Committee arrangement.

Devolution of the setting of income tax rates and bands to Scotland, as recommended by the Smith Commission, raises a number of issues.

First, it would create a part of the Finance Bill that would not apply solely to England, or to England and Wales, but to all of

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[40] McKay Commission, paragraphs 236-237.

the UK excluding Scotland.[41] Second, given the significance of a Finance Bill, both for the UK's international financial standing and for the credibility and perhaps survival of a government, negotiations could acquire a different character from those over other legislation.

None of this, however, makes the case for excluding these provisions of the Finance Bill from the proposed new procedures. An income tax increase for the rest of the UK being passed by the votes of Scottish MPs would raise the West Lothian Question in its sharpest possible form.

The Chancellor has recently clarified the government's view.[42] The new procedures would quite properly apply to rates and thresholds on earned income in the rest of the UK. However they would not apply to 'the elements of income tax that are going to remain UK-wide', such as the basic allowance, treatment of savings and investment income, definition of income and reliefs. This reinforced the White Paper's indication, that under Option 3, 'the principle of requiring consent from an English Grand

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[41] It could be argued that the creation of a Scottish rate of income tax under the Scotland Act 2012 has already raised West Lothian issues, and that implementation of the Silk income tax proposals for Wales after a referendum would do the same. However, under these proposals the relevant income tax revenue is shared, whereas under the Smith Commission proposals the Scottish government will receive all the revenue. The Scotland Act and the Silk proposals give tax varying powers within a UK-wide framework of rates, bands and reliefs, differing chiefly as to whether or not the basic, higher and top rates of income tax in Scotland or Wales would change in lock-step.

[42] The Chancellor of the Exchequer, Treasury Select Committee hearing on proposals for further fiscal and economic devolution to Scotland, 20 January 2015.

Committee could be applied to levels of taxation and welfare benefits where the equivalent rates have been devolved to Scotland or elsewhere.'[43]

Under such circumstances, a government would no doubt seek that its fiscal measures were not seen as favourable to one part of the UK and prejudicial to others. At the same time, the 'double veto' aspect of the new procedures offers the government protection; it would have to take account of majority opinion in the UK excluding Scotland, but amendments proposed by that majority could not be forced on the government. There would be considerable scope, and the incentives, to reach accord.

These and other procedural changes will need to be, and can be, addressed, complex though some of the problems posed by them may be. They should not be allowed to become a distraction from the crucial task of answering the West Lothian Question. The immediate priority is to establish the clear principles and approach by which the primary legislation process can be improved to protect English, or English and Welsh interests. Only with that accomplished will it be possible to put in place a stable and durable rebalancing of the Union.

5.4 Making it work

Any reform proposal moves the country into somewhat uncharted territory. The more radical the steps, the greater the unknown consequences.

However, the UK is now sufficiently far down the devolution path – and with Scotland set to go yet further – that change is all but inevitable. In navigating it, the search for neat and symmetrical

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[43] White Paper, p.26.

answers should be rejected. Those that support the operation of practical politics are badly needed. What matters is not whether the institutional architecture is tidy or messy, but whether it is felt that any new arrangement succeeds in mobilising consent. That is why it is essential that English votes in Parliament should be capable, and be seen to be capable of, preventing laws on issues largely or exclusively affecting the English from being imposed on them by a UK-wide majority. Over time, any process, if it succeeds in mobilising consent, may become self-reinforcing: what was once innovative becomes accepted and is seen as a normal, even the traditional way of doing things.

The proposals for change outlined in this paper are in a Burkean tradition of prudent and organic reform that has served this country well. That tradition provides the resources to handle the unique challenges posed by asymmetric devolution, and to sustain and renew the Union and the institutions that underlie it.

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