

REPORT

ENGLAND AND THE UNION
HOW AND WHY
TO ANSWER THE
WEST LOTHIAN
QUESTION

Jim Gallagher

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NEW IDEAS
for CHANGE

Foreword

The Conservative manifesto for the 2010 elections proposed action on the West Lothian question, and a commitment to set up a commission on it was included in the programme for government agreed between the Conservatives and Liberal Democrats in May 2010. At the time of writing, an announcement of the composition and remit of the commission had recently been made and it has begun to meet.

This paper briefly reviews the history of the issue, and analyses the precise nature of the problem and how real it is. It considers the various solutions which have been proposed, rules some out, and considers one in more detail. It concludes that action should now be taken, and makes proposals for doing so. It suggests, however, that any action should be part of a wider redefinition of the UK's territorial constitution, the Union, to take better account of devolution.

I am grateful to Nuffield College, Oxford, for a stimulating location in which to look at this issue, as a Gwylim Gibbon Fellow there, and to Professor Iain Mclean and Mr Guy Lodge of that college for helpful discussions on this work. Any blame, however, is mine.

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1. INTRODUCTION

Since legislative devolution to Scotland in 1999, there has been concern in the Conservative party that a Labour-led UK government could be sustained by Scottish MPs but nevertheless legislate for English domestic issues, such as health and education, which are devolved in Scotland. Conversely, the Labour party has been reluctant to make changes which might affect its capacity to form an effective UK government.

During the 2001 election campaign, the Conservatives promised that only English and Welsh MPs would be entitled to vote on government bills relating to England and Wales, and English MPs alone on laws which applied exclusively to England. Similarly, the 2005 Conservative manifesto promised that a Tory government would act to ensure that English laws were decided by English votes.

During the last parliament, the issue was reviewed for the Tories by a ‘democracy taskforce’ chaired by Kenneth Clarke, which recommended a cautious way of delivering this. The 2010 Conservative manifesto did not commit specifically to his method but said:

‘Labour have refused to address the so-called ‘West Lothian question’: the unfair situation of Scottish MPs voting on matters which are devolved. A Conservative government will introduce new rules so that legislation referring specifically to England, or to England and Wales, cannot be enacted without the consent of MPs representing constituencies of those countries.’

Without an overall majority, the Conservatives had to negotiate a programme for government with the Liberal Democrats, who seemed noticeably less keen to address the issue. It contained the following commitment:

‘We will establish a commission to consider the “West Lothian question”.’

At the time of writing, 18 months on, the membership and remit of the commission has been announced. The commission is chaired by Sir William Mackay, former clerk of the House of Commons, and its remit is:

‘To consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.’

What is the problem?

The problem implied in this remit is that Scottish MPs vote on English legislation dealing with matters which are devolved in Scotland. No MP – English or Scottish – has the opportunity to vote on these matters for Scotland. Of course, the issue has always arisen for Northern Irish MPs and, now that there is fuller legislative devolution to Cardiff, it applies to Welsh MPs also. England-only legislation therefore may not reflect the balance of views in England, in the way that devolved legislation does for Scotland, Wales and Northern Ireland.

The problem is, however, potentially wider than just legislative process. Parliament at Westminster forms governments, and decides on spending and taxation, as well as passing laws. The UK government is also the government of England, but Scottish, Welsh and Northern Irish MPs can contribute to its formation. They may sustain it in office and vote on its decisions on domestic spending and taxation, as well as legislation.

WE Gladstone wrestled with this issue over Irish home rule, and lost. The lessons which can be drawn from his experience are considered in the next section. In many aspects, the issue has not changed.

The West Lothian question is an anomaly. It follows from having devolved legislatures for some of the UK but not for England. It might be of interest to constitutional anoraks only were it not for the different pattern of MPs returned by each of the nations of the Union. The third section of this paper asks when a mere anomaly becomes a political problem. Does it matter in practice, or is it merely the prominence of Scottish politicians in Labour governments from 1997 to 2010 which has drawn attention to the issue? Will the planned reductions in the number of Welsh and Scottish MPs mean it will no longer present a significant risk?

Several sorts of solutions have been canvassed: new English institutions, cutting the number of non-English MPs, or allowing English votes to make English laws in parliament. Not all of these work, and some of the cures might be worse than the disease. The potential solutions are analysed in section four. Section five looks in detail at how a parliamentary solution to the problem might be devised, and section six looks at two in particular which have been proposed.

Why is it, then, a dozen years after legislative devolution to Scotland, that addressing these anomalies remains at best a possibility? One obvious explanation is political: where Conservatives may see opportunity, Labour sees risks to its capacity to govern effectively. Just how significant those risks are is assessed in section three. Another is that any changes might destabilise the Union. Section four of the paper identifies which potential changes should be ruled out for that reason, and how any remaining risk might be mitigated. Finally, there remains the fear that change would create unmanageable difficulties for legislation or undermine the status of MPs at Westminster – these fears are addressed in sections five and six.

Section seven of the paper concludes, in the light of this analysis, that something can and should be done, and outlines how. More important, it argues that the Union parliament's finding a way 'to listen to England' is a key element in developing the UK's territorial constitution to take better account of the reality of devolution.

2. LESSONS FROM HISTORY

Despite its name, the question was Irish long before it was Scots. Gladstone struggled with it when proposing his Irish home rule bills. In his first such bill of 1886, the problem did not initially arise. Ireland was to have a dominion legislature, and no MPs at Westminster, the imperial parliament. This would have removed 101 Irish members – among them many troublesome Parnellites – from Westminster,¹ and allowed the business of government there to proceed in a more orderly way.

The bill did not progress, but one of its most serious problems was the link it proposed between taxation and representation.² Gladstone's original plan called for the total exclusion of Irish members³ and the devolution of customs and excise duties. However the latter was unacceptable to key British business interests and he was persuaded to drop it. So Irish taxes were to be set in Westminster, and the spectre of taxation without representation arose.

Back in office for his second attempt at home rule in 1893, Gladstone proposed keeping Irish MPs at Westminster, though reduced in number to 80, and immediately opened up the challenge from the bill's opponents of their role there. He struggled with the idea of 'inners and outsiders', based on a distinction between Irish and imperial issues (Irish MP's would be 'in' for imperial issues only, or for reserved matters as we would now say), but failed to produce a clear solution. He eventually concluded that:

'it passed the wit of man to frame any distinct, thorough-going, universal severance between the one class of subject and the other'

And he gave up on the idea. The bill was in any event doomed by Conservative opposition in the Lords and fell.

The Irish question remained at the heart of British politics in the following decades. The subsequent home rule bills, of 1914 and 1920, both retained Irish MPs at Westminster, but in further reduced numbers (42 and 46). Once the Irish Free State came into being, the Northern Irish share of this reduced number continued to go to Westminster. In 1922, 12 were elected. During the period of (what we would now call) devolved government at Stormont, the number of MPs remained at this 'discounted' level.⁴ They were predominantly Unionist and, until the 1970s, habitually took the Conservative whip at Westminster.⁵

During this period, the West Lothian question was largely quiescent. The number of Northern Irish MPs was small, and although they regularly aligned with the Conservatives, this was not generally a source of controversy.

The issue did surface in one unexpected way, in the 'prayer book crisis' of 1927–28.⁶ The Church of England was, and is, a state church, 'by law established'. Although founded by a monarch, it became after the revolution of 1688 effectively answerable to parliament, and significant changes to its rules or practices had to be given the force of law by act of

1 As indeed had been proposed by Parnell in his 'Constitution for Ireland'.

2 Gladstone noted to himself: 'Taxation or representation. A. Shall we retain powers of taxation. B. Shall Irish Members continue to sit? These subjects are inseparable.' (Kendle 1989)

3 He seems to have floated the idea of allowing them to attend at Westminster when Irish taxes were discussed but that was not fully explored.

4 That is, at less than population share would suggest.

5 They eventually broke with the Conservatives over the power-sharing Sunningdale agreement.

6 See for example Machin 2000

parliament. By the late 19th century this had become problematic for practical reasons as parliament struggled to find the time to deal with church matters.

The problems took on a constitutional air when the church moved towards introducing a new prayer book. This had a distinctly high church feel to it, and was bitterly opposed by many in the evangelical wing of the church. It was parliament which had to decide, although not all MPs and peers were members of the Church of England, and many did not represent English seats.

In the end, it was the views of the Commons rather than the Lords which were to prove decisive, and the votes of non-English MPs were critical. The vote was not whipped on party lines. Scotland had its own national church and a number of members decided not to vote. Scottish (and Welsh) opinion tended to be more evangelical than the English MPs' did, and although 31 Scottish members abstained, 33 voted against the new prayer book and only six supported it. The new Church of England prayer book was rejected, apparently against the balance of English opinion, by a UK Commons. However, voters included not just Scottish and Welsh MPs (such as David Lloyd George, who voted against) but also MPs with no church affiliation (such as the one Parsee MP). So the issue of territorial asymmetry was mixed up with that of parliamentary authority over a religious body.⁷

One later episode is also instructive.⁸ In 1965, prime minister Harold Wilson held a bare majority over the Tories, and wished to nationalise the steel industry. He was outraged when the Ulster Unionists, allied with the Conservatives, voted against – there was no steel industry in Ireland. Elwyn Jones, his attorney general, was commissioned to consider an 'in and out' scheme, but agreed with Gladstone that this was beyond the wit of man: despite Wilson's outrage, the question remained unanswered. What's instructive is that it was a Labour prime minister who was so keen to find a solution.

Several lessons may be drawn from the Irish case. First and most obviously, the root of the question is Westminster's dual role as both an 'imperial' – or now 'Union' – parliament and a domestic parliament. While this persists, the anomaly will too, and may need to be addressed.

Second, the problem need not concern legislation alone: Gladstone got into the morass of inners and outers because of his concerns about taxation and representation. And third, anomalies only matter when they have political bite – which this one did have in the late 19th century, but lacked for most of the 20th.

The issue rekindled

The Royal Commission on the Constitution, which sat from 1969 to 1974, was next to address the West Lothian question.⁹ The majority report recommending legislative bodies for Scotland and Wales recommended a reduction in the number of Scottish MPs, not to a discounted level but rather to a proportionate one, to bring them into line with English representation.

The commission considered the 'in and out' solution but rejected it as impractical. It concluded:

7 The governance of the Church of England is happily beyond the scope of this paper.

8 See Straw 2007

9 See RCC 1973

‘[A]ll Members of Parliament, whether or not they come from regions with their own legislative assemblies, must have the same rights of participation in the business of the House of Commons.’

Ibid, para 814

Interestingly, the dissenting commissioners, who recommended a scheme of executive devolution covering the whole of the UK, were most concerned with equality of political representation for citizens across the UK (though even their scheme itself raised the issue).

The commission’s recommendations eventually helped form the government’s 1974 devolution proposals, becoming the Scotland and Wales Bill of 1976 and, after the failure of that bill, the separate Scottish and Welsh acts. Only the former provided for legislative devolution, but no change was proposed in Westminster representation. The government was uncompromising:

‘[I]t is essential that the determination of United Kingdom policies should fully reflect the needs and contributions of all its constituent parts. For this reason the government regard it as essential that both Scotland and Wales should retain their existing number of Members of Parliament in the United Kingdom Parliament.’

HM Government 1974

It was during the passage of this legislation that the issue became dignified with its present name, in recognition of MP Tam Dalyell, who raised it in his 1977 book *Devolution: the End of Britain?* and pursued it with notable persistence in the Commons.¹⁰ But in the Scotland Act 1978 the government resolutely ignored the question, and did not reduce the number of Scottish MPs, even to the proportionate level proposed by the royal commission. This was said to be beyond the scope of the bill. Perhaps providentially, that scheme of devolution never came into effect.

Legislative devolution for Scotland

There the issue rested, throughout the period of Conservative government, until 1997. Then the Labour government’s white paper, *Scotland’s Parliament* (HM Government 1997) proposed a more thoroughgoing scheme of Scottish legislative devolution, better compared to Stormont in scope than to the 1978 assembly. It proposed a reduction in the number of Scottish MPs – in effect, to a proportionate level – but it gave little other ground:

‘Scotland’s Members of Parliament will continue to play a full and constructive part in the proceedings of the House of Commons’

Ibid, para 4.5

The number of Scottish MPs was duly reduced by the time of the 2005 election, though the reduction in the number of MSPs which had been planned in order that the Holyrood and Westminster constituencies could continue to match was not taken forward.

10 ‘Mr Dalyell: “The point cannot be made too often.” – (Minister of State, Privy Council Office) Mr John Smith: “Yes, it can.” – Mr Dalyell: “No, it cannot.”’ (House of Commons 1977)

Legislative devolution in Wales

Before 2011, West Lothian was a hypothetical question for Wales. The assembly created in 1999 had powers to make secondary legislation only (rather like the bodies recommended by the dissenters to the royal commission). Even when the 2006 Government of Wales Act allowed for the creation of islands of legislative competence within the assembly's executive powers, these were small and Westminster remained Wales' dominant domestic legislature.

The 2006 act did, however, provide for a referendum on legislative powers. This was held in 2011, and as a result Wales is now in a position similar to that of Scotland and Northern Ireland. It has wide domestic legislative powers, albeit not as wide as Scotland's, as justice issues are not devolved, and not so well or broadly defined, because of the way in which the 2006 act was drafted. That act did not make any provision to alter the number of Welsh MPs in consequence, but the number will be cut to a proportionate (but not discounted) level under the Parliamentary Voting System and Constituencies Act 2011.¹¹

¹¹ As in Scotland, the link between Cardiff and Westminster constituencies was broken so as to avoid reducing the number of assembly members.

3. WHEN DOES AN ANOMALY BECOME A PROBLEM?

For most of the 20th century, the West Lothian question has been a minor anomaly. A small number of Northern Irish members were largely concerned with their own affairs and seldom critical to British domestic issues. The laws affecting the Church of England were an ecclesiastical rather than a political concern. Even after 1999, although the issue was a source of resentment to Conservatives, it had an effect on policy only when Labour's English majority was reduced by backbench rebellions. The Conservative opposition complained when Scottish MPs voted on the bill which introduced student fees in England, even though that matter was devolved in Scotland, but in fact that bill also contained important UK-wide provisions.

Stop asking the question?

So it is not surprising that the position of government until 2010 was that the question did not need an answer: as Derry Irvine famously remarked, the answer was to stop asking the question.

Of course, Irvine was making a political point, and just as the argument from the Conservative side can be criticised as partisan, so can this dismissive reply. Nevertheless, this approach has a respectable pedigree. Wilson backed off (and of course later secured a UK majority) and even Gladstone and his successors gave up. A good argument can indeed be made for doing nothing. England is dominant at Westminster, with 85 per cent of the population and of MPs, and so cannot readily be railroaded into policies that are not supported there. Indeed, the English majority can override the votes of the smaller nations. Scotland and Wales previously enjoyed some special protection by means of over-representation, but will now have their status as smaller partners in the Union recognised by having domestic legislatures, as Northern Ireland does.

This question is an inevitable product of an asymmetrical union, with the smaller nations sharing a parliament and maintaining their own legislatures as well. In any event, the problem is largely theoretical. It has been exaggerated for partisan purposes in recent years, and none of the proposed solutions can answer the problem satisfactorily. So it's best on the whole, the argument runs, to do nothing.

What would it take to demand an answer?

There are three factors which, taken together, might elevate the West Lothian question from a theoretical anomaly into an issue that demands an answer:

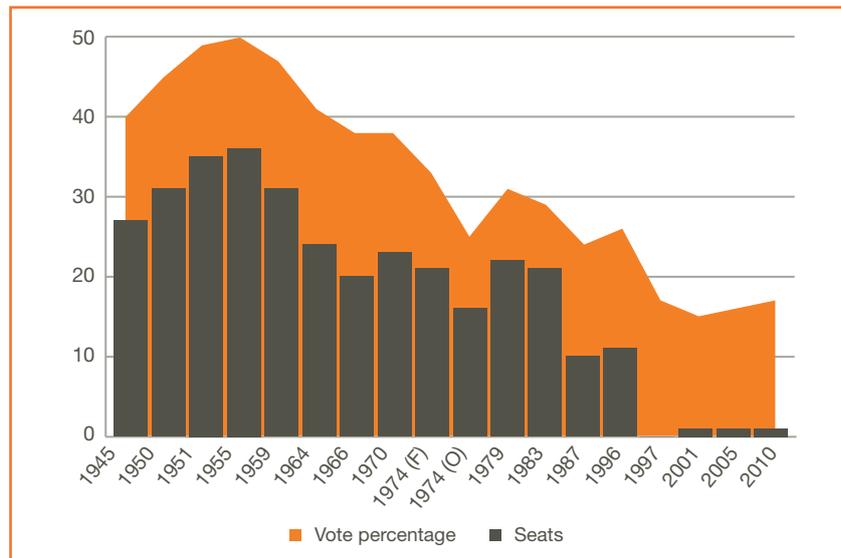
- Political divergence between the nations of the Union and its effect on representation
- Scale – the number of MPs and their potential significance in the Commons
- Perhaps most important, whether the English think it is a problem.

Political divergence and representation

No law of nature forbids the Scots and Welsh from voting Conservative. But Conservatives have never been strong in Wales¹² and they can no longer rely on the working class Unionist (vis-à-vis Ireland) vote which secured their Scottish position in the 1950s. The issue is most simply indicated by looking at the Conservative share of the vote and seats in Scotland (see figure 3.1 over).

12 Indeed the Conservatives last won a majority of seats in Wales in 1841 (see Russell and Lodge 2006).

Figure 3.1
Conservative
performance in general
elections in Scotland,
1950–2010



This divergence between the nations of Britain may well be less connected to notions of national identity than to the trials of economic history. It is part of a wider north–south divide in British politics. Tracking that is beyond the scope of this paper,¹³ but one illustration captures the issue. In 1950, the three northern cities of Liverpool, Manchester and Newcastle sent 11 Conservative and 13 Labour MPs to Westminster. Since 1987, they have not elected a single Tory. Of course what these northern regions lack – and are unlikely to get – are comparable political institutions to express this divergence, and so it does not have the same resonance as West Lothian.

Voting systems matter too. In the more proportional system used to elect MSPs and assembly members (AMs) in Wales and Scotland, greater Conservative representation is secured even at similarly low shares of the vote. Wholesale reform of the voting system to a more proportional one is, however, hardly likely to be introduced in order to answer the West Lothian question: this would be a sledgehammer to crack a nut. Following the alternative vote referendum of 2011, proportional representation for Westminster is now off the agenda. But in any event, even a fully proportional system would in the 2010 election have secured only (by the author’s estimation) about 16 more Scottish and Welsh seats for the Tories: enough to mitigate the problem but not to avoid it completely. The divergence is in votes, and is not primarily an artifact of how they are converted into seats.

Scale

Under the Parliamentary Voting System and Constituencies Act 2011, the Westminster parliament will consist of about 600 MPs, of whom something over 90 will represent Scotland, Wales and Northern Ireland. Even given political divergence, will 80 or 90 MPs make a real difference to UK and English politics?

It is clear that even as many 18 Northern Irish MPs are relevant to parliamentary arithmetic only in exceptional circumstances, such as when a government, like Harold Wilson’s of 1964–66, lacks or barely has a working majority in any event. (In the 1950 election, which was also close, the 12 Ulster members came near to holding the balance of power: a slightly higher Conservative vote could have resulted in a Conservative UK government despite Labour holding a majority in Great Britain.)

¹³ See Lodge and Gottfried 2011: 7–8

Scottish MPs, however, have always been more numerous and potentially more influential. Have they in fact imposed Labour governments on England?

Annex A looks at all the general election results from 1832–2005, and asks whether a West Lothian question would have arisen had there been devolved legislatures at the time. There is little to be learned from the elections of 1832 to 1918. Most were held under a limited franchise. If united, 100 Irish members could hold the balance of power, as Gladstone found.

Of this era, the elections of 1910 were the most interesting. The Liberals were (barely) the largest party in the UK but the Irish Nationalists held the balance of power. They used it to sustain a Liberal government. The Conservatives and Liberal Unionists had an overall majority in England, but no party did so in Great Britain, nor indeed in Great Britain plus Ulster. (Unionist predominance there would not have been enough to offset the Liberal advantage in Scotland and Wales.)

Table 3.1
General election results,
1922–2005, summary

Since the election of 1922 the UK has had its present shape, with Northern Irish rather than Irish members. The tale of elections of this form is set out in annex 2 and summarised in table 3.1 below.

Election	Government formed	Would a West Lothian question have arisen?	Effect, if any
1922	Conservative	No	–
1923	Labour minority	No	–
1924	Conservative	No	–
1929	Labour minority	No	–
1935	Conservative	No	–
1945	Labour	No	–
1950	Labour	Potentially, but in relation to Wales	England exactly split, Welsh MPs secured small UK majority
1951	Conservative	No	–
1955	Conservative	No	–
1959	Conservative	No	–
1964	Labour	Yes	Government needed Scottish MPs to survive
1966	Labour	No	–
1970	Conservative	No	–
1974 (Feb)	Labour minority	Yes	Conservative majority in England; Labour UK minority government struggled on for 8 months
1974 (Oct)	Labour	No	Labour largest English party
1979	Conservative	No	–
1983	Conservative	No	–
1987	Conservative	No	–
1992	Conservative	No	–
1997	Labour	No	–
2001	Labour	No	–
2005	Labour	No	–

It is possible to conclude that in the 60 years from the end of the second world war to 2005 there were three elections out of 15 where the territorial distribution of the vote meant that a Conservative-voting England was run by a Labour UK government. All occurred when English opinion was evenly split, and in two of them Labour's majority depended on Scottish members. They were:

- 1950–1951, when England was exactly evenly split and Scotland was similar; Labour's strong showing in Wales gave it a UK majority. This government had only a small overall majority and lasted only a year.
- 1964–1966, when the Conservatives had a majority in England but Labour's Scottish and Welsh strength (barely) overturned that at a UK level. On these results, had there been a Scottish parliament at this point, a West Lothian question would have arisen.
- February–October 1974, when the position was similar. Labour was the largest UK party and formed a minority UK government, but the Conservatives had an overall majority in England. This government too was short-lived, and in the October election Labour improved their position to become the largest party in England, with a very small UK majority.

The Labour governments of 1945–1950, 1997–2001, 2001–2005 and 2005–2010 all had overall English as well as UK majorities. There were two periods (1950–1951 and after October 1974) when Labour in government was the largest party in England but had an overall majority only with non-English votes.

In all of the elections until 2005, there were 71 or 72 Scottish seats but, despite that, there were only two periods, totalling two-and-a-half years, when Labour in government was not the largest party in England: 1964–1966 and February–October 1974. Had the reduction in the number of Scottish MPs to the 2005 level applied, it is quite likely that the Labour governments of 1964 and 1974 would *not* have been elected.

It might therefore be tempting to conclude that, with a proportionate number of Scottish MPs, the UK's electoral arithmetic is such that the West Lothian question is almost entirely theoretical rather than real.

Before substantial legislative devolution to Wales, virtually all legislation that was not UK- or GB-wide applied to England and Wales,¹⁴ so Wales was not relevant to the West Lothian question. That has now changed.

Wales has been since 1945 more determinedly Labour even than Scotland, sending as many as 30 Labour MPs to Westminster and only once since the war (1983) returning double figures of Conservatives. Welsh over-representation however has been even more marked than Scottish, and it too will be removed by the next general election, when there will be not 40 but fewer than 30 Welsh members of the Commons. It is probable that none of the three Labour governments mentioned above would have been in office had these reductions, and those affecting Scotland, been made.

Nevertheless Wales and Scotland together will still have about 80 MPs. In effect, adding Wales to the equation slightly more than offsets the reduction in the number of Scottish MPs. So if history is any guide, there may be some few, unusually close, elections at which Scottish and Welsh members could shift the balance in a two-party race for Westminster, and so may be critical in the government of England as well as of the UK. History does, however, show that this is not likely to happen often.

14 See annex 2 for a representative pre-devolution year.

Multi-party politics

The model of the British political system implicit in much discussion of the West Lothian question is of two big competing parties. This was clearly true from 1945–1970: the two main parties’ share of the vote rarely fell below 90 per cent. From 1974–1992, the Liberals polled on average 20 per cent of the vote, though won scant reward in seats.

Things began to change in 1997, when the Liberal Democrats secured 46 seats (10 Scottish), then 52 and 62 in the following elections. None of this prevented the return of a majority Labour government each time. The 2010 results, however, are more intriguing.

Table 3.2
2010 general election
results, by nation

	UK	Scotland	Wales	NI	England
Conservative	307	1	8	0	298
Labour	258	41	26	0	191
Liberal Democrat	57	11	3	0	43
DUP	8	0	0	8	0
SNP	6	6	0	0	0
Others	14	0	3	10	1
Con majority	-36	-57	-24	-18	63
Con/Lib Dem majority	78	-35	-18	-18	149

This result was unusually close, but it gave the Conservative party an overall mandate to form the UK government only along with the Liberal Democrats. The same grouping has a clear mandate in England, but so do the Conservatives alone, by some margin. Introducing equal constituencies will reduce Welsh MP numbers, and Scottish numbers a little, but that of itself would *not* have affected the overall pattern of the result.

Because 2010 was a close election the different geographical pattern of party support was potentially significant: had the swing from Labour to Conservative been slightly smaller, or indeed the Liberal Democrat performance a bit stronger, it might have resulted in a UK and English government – a ‘Lib-Lab’ coalition – that had a working overall majority but did *not* have a majority in England. Perhaps surprisingly, the territorial dimension of this result was not a major issue at the time.

Multi-party politics and coalition government therefore tend to increase the significance of the West Lothian question. Since 2010, Conservatives might argue that they have a mandate to govern England without regard to their Lib Dem partners. If as some think the UK has moved into a period of multi-party politics, then the territorial dimension of representation is likely to emerge as a bigger issue.

Some tentative conclusions can be drawn from this electoral survey:

- The idea that Scottish votes regularly imposed Labour governments on England is something of a myth: these were exceptional events which happened when English opinion was evenly split.
- Cutting the number of Scottish MPs will reduce the importance of the problem markedly, though legislative devolution to Wales more or less offsets that.
- The picture becomes more complex within multi-party politics – but then government formation will more likely take place in an arena of party compromise.

Both Conservatives and Labour can take some comfort from this: the latter in the recognition that addressing the problem may not be the huge sacrifice of potential power that some have feared. The essential truth is that *neither* party can form an effective majority government without a convincing win in England.

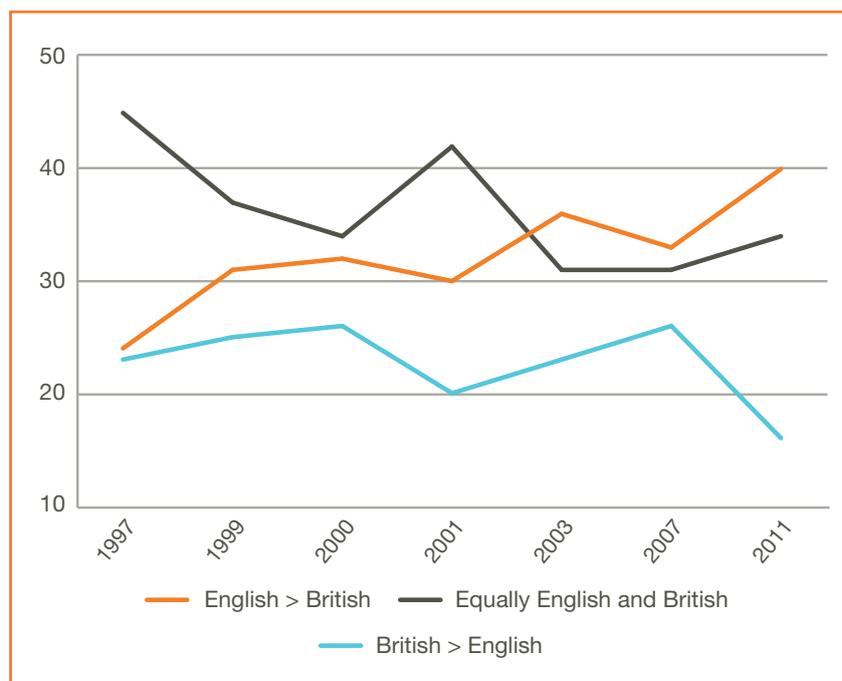
Do the English think it matters?

For most of period since devolution the West Lothian question has not been a headline issue: rather, voters needed to be reminded of it before they could see it as a problem. It increased in political salience on the right towards the end of the 2005 Labour government, probably exacerbated by having a Scottish prime minister and chancellor in London and a vocal SNP administration in Edinburgh, and by resentment about relative levels of public spending.

However, the data does show that since devolution in 1997 the English have become more aware of 'being English' rather than British, and devolution has caused them to distinguish more between the two. More recent data suggests that this is strengthening and becoming more politicised.

Certainly, English people are now likely to see themselves as solely English or more English than British, as opposed to British or equally British and English, as we see in the following data. (Indeed, as the same IPPR study shows, the English may lag behind the Scots and the Catalans in this but are well ahead of any other European region studied.)

Figure 3.2
Trends in 'Moreno'
national identity, England
1997–2011 (%)



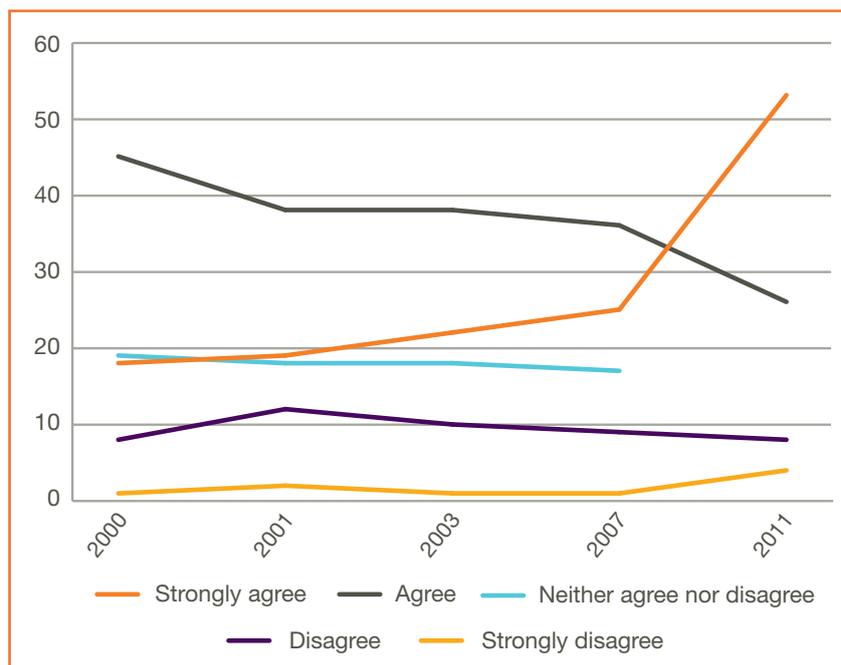
Source: Wyn Jones et al 2012

Notes: This table combines those that say they are 'English not British' with the 'More English than British' group, and those that say they are 'British not English' with the 'More British than English' respondents. Excludes 'Don't know' responses.

This increasing sense of national identity is also expressed in views about how English laws should be made.

The IPPR report from which this data is taken (Wyn Jones et al 2012) shows markedly increasing public support within England for addressing the West Lothian question. More than half (53 per cent) of voters in England ‘strongly agreed’ with the proposition that Scottish MPs should not be allowed to vote in the House of Commons on laws that affect only England. The data shows a clear trend over time.

Figure 3.3
Attitudes in England towards ‘English votes on English laws’, 2000–2011 (%)



Source: Wyn Jones et al 2012

Unsurprisingly perhaps, support for this proposition is strongest among Conservative supporters, but Labour voters mostly agree too.

Table 3.3
‘English votes on English laws’, by party affiliation, English voters (% of respondents)

	Labour	Conservative	Liberal Democrat
Agree strongly	46	65	32
Tend to agree	29	28	49
Tend to disagree	12	5	6
Disagree strongly	3	0	1
Don't know	11	2	11

Source: IPPR

Note: Columns may not add to 100 due to rounding.

It remains to be seen whether a period of identifiably English Tory–Lib Dem coalition government¹⁵ will mean the salience of this issue recedes, or whether pressure from Conservatives to be able to determine English issues (including such symbolic issues as foxhunting) without Liberal Democrat support will bring it to the fore. But, for the moment, it does seem that the English think this question matters.

¹⁵ Comprising an obviously English prime minister, chancellor and deputy prime minister, with only two cabinet members representing Scottish seats and 12 out of 59 Scottish MPs supporting the coalition parties.

Has the time come to do something?

In one obvious sense, clearly yes. The government has established its commission, and although recommendations do not always lead to action, there is at least a reasonable prospect of it.

In substance also a much stronger case can now be made for addressing the question. It has always been an anomaly but it is now potentially more significant. Political divergence shows no sign of disappearing, and even a reduced number of 80 Scottish and Welsh members could still make a politically important difference to Westminster arithmetic, especially in a three-party system. Most important of all, English voters may be beginning to see themselves as a political unit, and three-quarters of them think that this matters: just like Scottish and Welsh opinion, their views need to be listened to. It is arguably better to accommodate measured change now than to be forced into something damaging, in an unmanaged way, at a later date.

4. A PROBLEM AND ITS SOLUTIONS

The West Lothian question is usually defined in legislative terms: that since 1999 Scottish MPs have voted on matters affecting only England which are devolved in Scotland, and so have imposed laws which may not match the balance of political opinion in England. But as we have seen, there are some problems with this presentation.

First of all it, there is an important factual sense in which this was not the case at all between 1999 and 2011. Westminster has been Wales' domestic legislature as well as England's, so if an act of parliament was not of UK or GB application, it almost always applied to England and Wales. England-only acts have been like hens' teeth.

Now, however, that the Welsh assembly has wide legislative powers, we can expect to see some purely English bills, although it remains possible that many bills dealing with domestic policy will apply to some extent in Wales also. Indeed, this may be quite likely, given how closely entangled the law applying in England and in Wales will continue to be. This will have to be taken into account in the practical application of any solution that might be devised.

Second, it is also possible to state the problem much more widely: it is that the UK government is the domestic government of England too. It can be sustained by Scottish or Welsh MPs and so its non-legislative policies, its administrative actions and budgetary decisions suffer from the same alleged defect. Certainly there were complaints under the last Labour government when Dr John Reid, though representing a Scottish seat, served as health secretary, running what is almost exclusively an English domestic department. We might call this the stronger version of the question.

Options for answers

If the West Lothian question is not to be ignored, and will not be mitigated by the introduction of a more proportional voting system, what can be done about it? A number of answers have been proposed:

- More regionalism or decentralisation in England
- An English parliament
- A devolution discount in the number of MPs from Wales, Scotland and Northern Ireland
- Changes to parliamentary procedures to allow a greater English voice in English legislation ('English votes on English laws').

Each is considered below.

More English regionalism

Despite devolution, the UK remains a highly centralised state. For most of the population, there is no equivalent of the state legislature in a federal country. Almost all (96 per cent) of the taxes are levied centrally. Local government is tightly controlled, and over a period of decades has lost much of its freedom of action. The Royal Commission on the Constitution was the last time that the UK's territorial constitution was looked at in the round, but their recommendations led to no change for England.

The Conservative government created regional administrative structures in the 1980s, but the Blair government's attempt to give these political control and legitimacy fell at the first hurdle, the North East referendum. Only London enjoys any form of decentralisation, though it is more a form of local than regional government – Boris Johnson is after all a 'mayor'. The most likely route for decentralisation in England, if it is to happen at all, is enhanced powers for some local authorities or city-regions, perhaps on the mayoral model.

Administrative devolution, even on a wide scale, is in no sense a technical answer to the West Lothian question. No legislative devolution has ever been seriously proposed and in no model of English regional government is power constitutionally devolved to another level of government.

Nevertheless, it is possible that some regional decentralisation might alleviate tensions around the West Lothian question (or at least could have done so in the past) by giving people in England a greater sense of control over their own affairs. It could lend support to the argument that the UK is an even more asymmetric state than simply the differences between England, Scotland, Wales and Northern Ireland suggest. Different parts of England may well want different degrees of decentralisation, and the untidiness of West Lothian has to be seen in context of a much messier institutional picture all around.

Elected government for each of the 10 standard regions of England was never very likely and is now a dead duck. The new focus may fall on councils, with the Localism Act 2012 allowing additional powers to be given to selected local councils, perhaps allowing the further empowerment of cities and the regions around them. A strong case can be made for decentralisation in England: devolution has distributed power to only 15 per cent of the UK's population, and England remains a very centralised state. Rather like electoral reform, English decentralisation is a change which will not be introduced specifically in order to solve the West Lothian anomaly, although it ought (for other good reasons) to be part of the developing territorial constitution of the UK.

An English parliament

There is a campaign for an English parliament, but it would be fair to say that it has existed on the fringes of mainstream politics. In opinion polling, typically around 20 per cent of voters have supported the idea, though this support has been increasing in recent years,¹⁶ and it is not the policy of any major political party – even of the Liberal Democrats, who support federalism for the UK.

An English parliament would be a way of making the UK fully and formally federal, with Westminster as the federal level of government and four states within the UK. The new English parliament would deal with domestic matters for England; Westminster would certainly deal with foreign affairs, defence and macroeconomic policy. Important choices would have to be made about many other policy areas, most notably social security and taxation.

The design of such a federal system would require a number of very significant consequential changes to the rest of the UK. The powers of the four 'state' governments would have to be aligned: perhaps each might wield the same bundle of powers as Scotland or Northern Ireland presently does. A wholly new financial system would be needed to manage vertical fiscal transfers from Westminster to the new devolved bodies, and as the pressure for more tax powers to be devolved to England might prove hard to resist, a highly likely result would be a reduction in fiscal transfers across the UK.

It is, however, the political consequences which would be the most profound. The majority of UK political power would move to the English parliament. It would become the main focus of national debate (as Holyrood has in Scotland). It would be responsible for 50 per cent of all UK public spending, or 80 per cent if social security was devolved as well. The English prime minister and government would dominate English and hence UK politics,¹⁷

¹⁶ The 2011 British Social Attitudes survey found that 25 per cent of English respondents said they supported an English parliament.

¹⁷ This was the analysis which led the Royal Commission on the Constitution to recommend against an English

likely in many ways to outshine their UK counterparts. Given these consequences, an English parliament is highly unlikely to be consistent with a stable union. No example exists of a federal system in which 85 per cent of the population lives in one state alone.

Undoubtedly, the creation of an English parliament would answer the West Lothian question. Indeed, it is the only answer which deals with the question in its stronger form. But the price of dealing with a troublesome anomaly would be a high one: essentially the end of anything that would be recognisable as the UK. The purpose of addressing the West Lothian question is to accommodate differing national political priorities inside a wider union: an English parliament would have the opposite effect.

‘Devolution discount’

The Parliamentary Voting System and Constituencies Act 2011 reflects the present government’s policy that, as a matter of principle, UK voters should as nearly as possible be equally represented in parliament. Nevertheless, cutting the number of Scottish, Welsh and Northern Irish MPs at Westminster to a level *below* their per capita proportions is often proposed as a pragmatic answer to the West Lothian question.

Certainly, it would have been hard to justify the continuing over-representation of Scotland at Westminster proposed in the 1978 devolution plans, and now that Wales has its own domestic legislature with wide powers, there was little argument against cutting the number of Welsh MPs to a proportionate level.

There is precedent for the idea of a further reduction or ‘devolution discount’, as we have seen, in relation to Ireland: Northern Ireland returned proportionately fewer MPs to Westminster so long as Stormont dealt with all domestic matters. It is a simple solution, and would be relatively easy to deliver in practice. Once implemented, it reduces the scale of any problem, and so makes the emergence of conflict less likely.

But there are difficulties with the idea. The scale of the real problem has already been reduced, as the analysis of election results above shows. And if the problem is primarily one of principle then it remains even once its scale is further reduced. Moreover, there is no obvious justification for the extent of the discount: one-half, one-third, one-quarter, one-tenth – how severe, and why?

There is also a more profound problem, the one Gladstone grappled with. Parliaments tax as well as legislate, and cutting the number of MPs breaks the direct link between taxation and representation. Wales and Northern Ireland do not have any taxation powers (other than for local taxes) and seem at present unlikely get them. Even the Scottish parliament has powers only to vary taxes set at a UK level, and on current government plans it will have shared access to income tax and full responsibility for number of minor taxes only.

If, however, there was to be a more significant degree of tax decentralisation to the devolved administrations, as has been suggested by some¹⁸ under the rubric of ‘devolution-max’, then the case for a reduction in MP numbers becomes a good deal stronger.

Changes to parliamentary procedure

The most commonly canvassed way of addressing the problem is some form of change to parliamentary procedure at Westminster to give English MPs more control over English legislation. This does not deal with the stronger version of the question: that would imply

parliament (see RCC 1973: para 531).

18 See for example Reform Scotland 2011. It however makes no reference to Westminster representation.

creating an English government, in addition to the UK government, inside Westminster. Doing so would have all the disadvantages of an English parliament and its unacceptable side-effects, without its clarifying simplicity.

But is there scope to deal with a narrower version – ‘English votes on English Laws’, sometimes known as EVoEL – as a number of figures have suggested? For example, in 2007, Sir Malcolm Rifkind proposed following for England the previous, pre-devolution, practice of taking the second reading of Scotland-only bills in the Scottish grand committee. That committee consisted of all Scottish MPs, and did not have a government majority when used in this way. It was in consequence only sent uncontroversial bills, which it was expected to approve. Nevertheless, there is no reason in principle why such a committee – or, rather, its English equivalent – could not hold a second reading debate on any bill.

Similarly, Kenneth Clarke’s ‘democracy taskforce’ produced before the election a slightly different proposal, involving only English MPs at the committee stage and certain constraints on amendments at the report stage for English bills. Both of these schemes share the assumption that it will be necessary for the UK government to reach some accommodation with the balance of English opinion before passing legislation affecting England alone.

The next section of this paper goes on to consider just how far that accommodation should go, and by what means. But how does it come about that not one but two senior Conservatives are able to offer solutions to the ‘in and out’ problem that not just Gladstone but Harold Wilson concluded was beyond the wit of man? The answer lies in the Commons committees, which are much more widely employed now than in the 19th century. Legislation can be routed through them in a way which preserves the formal equality of members of the House which so troubled the royal commission.

This is a more important point than it sounds, as the undesirability of ‘creating two classes of MP’ is often raised as a conclusive objection to action on this issue. As we shall see in section 6, it is *not* necessary to make that division in order to address the problem.

Would such an arrangement eventually collapse into an English parliament within Westminster, so rendering England ungovernable in certain circumstances, as some commentators have suggested?¹⁹ That depends critically on the design of the process, which is considered in the next section.

¹⁹ See Bogdanor 2009: 191

5. DESIGNING A PARLIAMENTARY ANSWER

This section analyses how House of Commons processes might be used to allow a greater English voice on legislation that applies only to England. There are two dimensions of the process to consider. First, whether to introduce additional stages to the progress of a bill or to create a substitute or alternative stage in the current process. Second, whether the new process is to be strong or weak, dependent primarily upon the power given to MPs at those stages. Examples of each are summarised in the following table and discussed further below.

Table 5.1
Parliamentary options

	Additional	Alternative
Weak	Advisory committee of English MPs	Committee stage of English MPs only, with party balance of whole House
Strong		Committee stage reflecting English party balance Second reading in an English grand committee

An example of a weak, additional process would be to commit a bill, either before or after second reading, to a committee comprised of English MPs only. The committee would consider the bill and report back to the House prior to second reading or committee stage on its effect on England. This would not allow the new committee to stall or block a bill, but it would enable a debate on the impact the bill would have in England (or in England and Wales in some matters like justice or policing) in order to inform future stages.

By contrast, a strong, alternative stage could be to take all bill committee stages in a committee comprised of English MPs, with the composition of that committee reflecting the party balance in England. The committee would be able to amend the bill, and government would have to reflect very carefully before seeking to reverse any amendments at later bill stages. Another strong alternative option would be a second reading in an English grand committee: this is stronger than the first as a bill could be denied second reading and so not proceed.

Additional rather than alternative stages make the most sense if the process is to be a weak one: they would provide voice rather than control. A strong, additional stage (say, an extra debate on the principle of a bill in an English grand committee) differs from a strong, alternative stage only in adding an obvious focus for conflict.

Those who argue for ‘English votes’ will naturally seek a strong process, but just how strong it should be requires careful thought. First, attention has to be given to the practicality of bill procedure in Westminster, which after all remains England’s parliament. More important, the government is England’s government as well as Britain’s: the requirement to heed English opinion when legislating should not completely disable the process of governing England. Whether a process can be designed that allows for English voices to be heard on legislation but still allows English government to operate even when it does not have the support of a majority of English MPs is discussed later in this paper.

Three questions in process design

What makes a procedure weak or strong? The main factors are summarised in the following table.

Table 5.2
Factors in procedural strength

	Weak	Strong
Composition of English stage	English MPs only in proportion to whole House	English MPs only in proportion to English party strength
Role of whole House	Gives second reading; or can overrule, eg at report stage	English MPs can deny second reading; or government cannot amend at report stage
Trigger to access process	Government (whole House) decides	'Objective' trigger; or English MPs decide

The first and obvious factor is how the party balance in any new process (committee, debate etc) should be calculated. Currently, public bill committees for bills which affect England and Wales only are comprised (usually) of members from England and Wales, but with the membership calculated on the basis of party balance across the whole House. This could be made mandatory rather than simply practice, and so at least offer some sort of presentational answer to the problem. But it would be weak compared to having a stage, such as a committee, which reflected the party balance *within* England (or England and Wales), providing a dominant voice in it for those MPs.

The obverse question concerns the role of the whole House. To what extent can it overrule the views of English MPs? If the government has untrammelled control and is able to ignore a purely advisory process by virtue of its UK majority then it will be able to get its legislation through and govern effectively, but it may pay a political price for doing so. In stronger processes, government would have to negotiate at some point with English MPs in order get its legislation through. This will be a tricky balance to strike, and what may at first sight appear to be merely the detail of any proposed process will turn out to be critical.

Determining which bills would be moved into any new process, and the form of trigger to access that process, is key in balancing the perceived strength of any new procedure. A number of forms could be used:

- English MPs could determine which bills merit the new procedure.
- An 'objective' trigger could be established, whereby the speaker certifies bills on the basis of an 'independent' view as to the territorial impact of a bill, and consequently which members should be able to vote at the English stage.
- The government could propose bills for the new process, to be decided by a vote by the House as a whole. If such a vote is whipped then this amounts to government control, though government could be criticised for not using the procedures.

Each option needs to be considered carefully. The first could remove from the majority in the House of Commons effective control over the legislative procedures of the House. At the extreme, it could remove the ability of a government to legislate for England and so be tantamount to having an English parliament. This is the sort of collapse feared by Professor Bogdanor (2009).

An objective trigger has its attractions but also risks. If there was to be any official discretion as to the characterisation of a bill then there is the potential for politicisation of

the role of speaker. But very few bills – no matter how ‘English’ – have *no* consequences for other parts of the UK, and so there remains a serious challenge in properly identifying English bills. Rather than a technical challenge, it may be that this must be regarded as a matter of judgment.

Is there such a thing as England-only legislation?

Separating Irish and ‘imperial’ legislation was a puzzle which Gladstone thought beyond the wit of man, and he had a strong incentive to solve it: Irish members could keep holding the Commons to ransom by disrupting the passage of bills that had little or no effect on Ireland.

Historically, England-only bills have been as rare as hens’ teeth. The most obvious reason is Wales: most legislation that is not UK- or GB-wide in scope has at least applied in England and Wales. This will change, but not completely, now that wide legislative powers are available to the Welsh assembly.

Until such time as there is a separate Welsh legal jurisdiction, there will always be technical difficulty in separating English and Welsh laws. For any English bill, there will often be consequential effects for Wales, and as a matter of law English bills necessarily change the law of England and Wales, even if the practical effect on Wales is negligible. Bills which deal with justice – with the criminal law, police, courts, sentencing and much of the civil law – will still relate to England and Wales. The new legislative competence of the Welsh assembly is defined differently from the Scottish parliament’s – and not so clearly. As a result, it will take some time before its precise boundaries are known and hence what legislation can be pursued there and not in Westminster. Because of the differences between the legislative powers of the Northern Ireland assembly and the Scottish parliament, there will also continue to be a class of GB-only legislation.

The present government’s legislative programme for 2011–12 provides examples of bills in each category:

Table 5.3
English aspect of 2011
Westminster acts

Enactment	Extent	Scope for England-only process?
Armed Forces Act 2011	UK (and in part to dependent territories)	No
Energy Act 2011	England, Wales and Scotland	Would have to be GB process
Police (Detention and Bail) Act 2011	England and Wales	No, and not in future
Academies Act 2011	England and Wales	Yes, in future, as education is devolved in Wales

In principle, therefore, any procedure which is devised to ensure that the legislative process reflects opinion in the part of the UK to which a bill applies should be capable of relating to Great Britain, or to England and Wales, or to England alone. Whether this will be worth doing in practice will depend on the detail of the process, but may ultimately be a pragmatic judgment.

Annex 2 takes a single year’s acts of parliament (2006) and asks whether they might have been subject to an England-only procedure. The results are instructive. In that year there were 55 public general acts. Only one applied solely to England: the Council Tax (New

Valuation Lists for England) Act 2006. The clue is in the name. If the Welsh assembly had the relevant competence and been willing to exercise it, up to 10 might have been drafted to apply to England alone. A further seven might have been drafted as England and Wales bills.

In many cases, there will inevitably be connected, or minor or consequential Scottish or even Northern Irish provisions in a bill that applies in substance only to England or to England and Wales. Hence the relatively frequent resort to the Sewel Convention to obtain the Scottish parliament's consent to legislating in a devolved area. The statute book is closely entangled.

A rule that subjected individual clauses of a bill to different procedures according to the extent to which they applied to different parts of the UK could render the legislative process as a whole more or less unmanageable. MP George Foulkes (now Lord Foulkes) memorably described this idea in 2004 as 'legislative hokey-cokey'.²⁰ To be at all workable, any process must apply to the whole bill: no hokey-cokey.

The composition of bills is, however, a matter for those drafting and introducing them. Some may well contain a mix of UK, GB and England-only matters. For example, the higher education bill which introduced student fees in England also contained UK provisions about research councils. If there were to be an 'objective' trigger to determine whether some form of 'English stage' applied, this would give government a legitimate route to bypass it, and so a powerful lever in the legislative process.

What this suggests is that an 'objective' test of a bill's application to England would be much harder to deliver in practice than it appears at first sight, and that it would be capable of being circumvented by government in any case. If no connected provisions jump out, it might not be too hard to dig them out, and at any rate it will often be possible to find some UK or GB provision that can plausibly be added to the bill if needed. An objective trigger is a will of the wisp: to that extent, Gladstone was right.

This implies that the trigger for accessing a new process should be a decision by the whole House to treat a bill 'as if' it applies to England only, and that this should then apply to the whole bill. There is precedent for this in the way in which the Scottish grand committee worked in the past. It does give the government considerable power – though power which it must take care in using because of the political cost. This is an important point to bear in mind when considering whether such a process might render England ungovernable, but it should also influence the design of other elements of the process.

Barnett: the red herring

There is one objection often made to the idea of reducing the role of MPs from Scotland, Wales or Northern Ireland in the process of English legislation that can be dismissed as a red herring. It is that because legislation may mandate expenditure in England it thereby affects the other nations' devolved spending, by way of the Barnett formula.²¹ SNP MPs have used this as justification for voting on controversial English legislation. Even the Royal Commission on the Constitution thought it was a good argument (RCC 1973: para 813).

It isn't – and making it betrays a failure to understand both how parliament controls public finances and the status of the Barnett formula.

²⁰ He was against it.

²¹ The Barnett formula determines the budgets of the devolved bodies by reference to changes in comparable expenditure in England. So if there is an increase (or decrease) in public expenditure in England on, say, health services (or spending on any other devolved matter) in a spending review this leads to an increase (or decrease) in devolved budgets of each of those countries in proportion to their relative population.

First, while it is true that substantive legislation may well have financial consequences, it does *not* change the budget provision voted by parliament. A bill which required additional spending on, say, some aspect of the NHS, might well simply lead to offsetting savings having to be found in some other aspect of NHS spending. If an act of parliament required changes to spending plans, these would have to be proposed by government either immediately or in subsequent public spending rounds. Changes in the NHS budget, for example, might lead to so-called ‘Barnett consequential’, or these might be offset by changes in other budgets. In parliamentary terms, these are controlled by appropriation procedures, on which all MPs will have a vote, as they do on taxes.

Second, although the Barnett formula is long established it has no legal or constitutional status. It is purely an administrative device. Although it enjoys a degree of political support at present (if only because no one can agree on an alternative) it could be altered at any time by administrative decision.

What about the House of Lords?

Discussion of the West Lothian question relates wholly to the House of Commons. After all, that is the elected chamber, and its members therefore have a geographical identification. Peers at present have no automatic geographical loyalty, even if many will see themselves as Irish, Welsh or Scottish. A government majority can in general not be assumed in the Lords because of the place of the crossbench peers, so it is in practice unlikely – even if they could be identified – that the votes of non-English peers would be critical on an English bill.

However, looking to the future, a wholly elected second chamber might, depending on the electoral system used, be able to sustain a majority either for or against the government on a party basis. If this majority were dependent on the votes of non-English members then, in principle, a ‘West Lothian question’ might arise: English legislation would be reviewed by non-English members and their votes might turn out to be critical.

It should nevertheless be possible to tolerate this risk. First of all, the introduction of a wholly elected second chamber is not an immediate prospect. Second, it is clear that the voting system for the elected members of a new second chamber would be proportional, reducing (if not wholly removing) the risk of conflict. Third, the second chamber, it seems to be agreed, would retain the role of a ‘revising’ chamber. Quite how that condition is to be secured is not clear, but if it is then it can be assumed that the new chamber would in the end be likely to give way to the authority of the Commons on legislation, so the risk of non-English legislators imposing their views on England would be small.

Conclusion: not an impossible task

It is clearly possible to devise a Commons procedure to allow English members a greater say in English legislation. It would not be perfectly tidy, and would carry some risks. Regardless of how it was designed in the detail, there would be points of dispute and controversy over its application. In designing such an ‘English process’, a balance will have to be struck between giving English opinion a voice and allowing the UK government still to discharge its proper role as the government of England.

The main conclusions that can be drawn about its design are:

- An ‘objective’ trigger to identify which bills are English is unlikely to be possible or effective.
- Bills must therefore be treated ‘as if’ they applied to England (or England and Wales).

- If this process is not to become in substance an English parliament within Westminster, the identification of English bills must be by decision of the whole House.
- To offset the power this will give to government, the new process should include a strong, alternative stage.

Creating such a process would mean that, in the unusual circumstance that the government did not have a majority in England or could not rely on that majority in relation to a piece of legislation, it would have to negotiate with English members to get certain bills through the Westminster parliament.

The next section examines in detail two proposals which have been made.

6. PRACTICAL PROPOSALS FOR CHANGE

In 2007, Sir Malcolm Rifkind proposed in a newspaper article a simple system. An English grand committee, consisting entirely of English members, should take the second reading of bills that applied only to England.²² This was based on his experience in the 1980s of the Scottish Grand Committee, which took the second reading of Scottish bills. He proposed that the subsequent procedure should remain unchanged.

Sir Malcolm did not refer to Wales. Nor did he discuss in detail the problem of a trigger, though he may well have assumed that it would be the same as for the Scottish Grand Committee (as discussed above, by decision of the whole House). In substance, although this is not a very detailed proposal, it is a simple and clear example of a strong, alternative stage. The government could be denied a second reading of an English bill unless it were prepared to compromise on its content. But the government would have a majority at all subsequent stages, and would be under an obligation neither to promote a bill nor to amend one after second reading, so long as so-called ‘wrecking amendments’ were avoided.

Such a process could be a significant constraint on a government that lacked a majority in England, which would have to behave more like a minority government, perhaps relying less on legislation and more on administrative action. There is no obvious route by which a procedure like this would collapse into a de facto English parliament at Westminster.

Sir Malcolm, however, deferred to the subsequent report of the Conservative party’s democracy taskforce,²³ chaired by Kenneth Clarke and published in July 2008. This presented a different, more elaborate scheme. In essence:

- All bills would pass through the normal Commons processes up to and including second reading. The whole House would vote at second reading.
- Bills should be moved into a new procedure by being certified as ‘English’ and so as a ‘suitable bill’ by the speaker. The report noted that the 1999 Commons Procedure Committee report says that it was possible to define bills according to the countries of the union that are affected by them.
- For suitable, English bills, the committee stage would be undertaken by English MPs only, in proportion to English party strengths.
- At report stage on the floor of the House, the bill would similarly be voted on by English members only.
- At third reading, the bill would be voted on by the whole House. Since no amendments are possible at this stage, the government might be obliged to accept any amendments made in committee or at report stage, or have the bill voted down and lost.

There are some technical problems with this idea:

- It too ignores Wales, but could now be applied to England or to England and Wales as appropriate.
- It has too readily accepted the idea of an objective trigger, with little analysis of whether it would actually work in practice.
- The proposal that some MPs would be unable to vote on the floor of the House (at report stage) is contrary to Commons principle. Rather than using committees, this plan falls back on ‘inners and outers’.

In substance, however, this is a well worked-out alternative stage model, substituting an English proportioned committee for a public bill committee and an English MPs-only

²² See BBC News, 28 October 2007: http://news.bbc.co.uk/1/hi/uk_politics/7065941.stm

²³ See Conservative Party 2008

report stage for a whole-House report stage. It is a reasonably strong model, in that the government might be faced with a 'take it or leave it' choice on a bill that had been amended at an 'English stage'. But, on the other hand, government can be assured a second reading of its bill, and there are some constraints on what amendments are allowed to bills that have received a second reading. Government, of course, retains the legislative initiative and can decide on the content of any bill it puts forward.

The problem of having members of the Commons who cannot vote on some matters on the floor of the House can be remedied by taking report stage of a bill in an English grand committee and then third reading on the floor of the House. In other words, *it is the bill which moves 'in and out', not the MPs.*

Does this proposition strike the right balance between allowing the government to govern England, and reflecting English opinion in legislation? Or does it so constrain government that it renders England ungovernable in some circumstances?

First of all, government would on this model retain control of all the other tools it has – UK- or GB-wide legislation, administrative action, taxation or spending decisions, and so on. So far as legislative process is concerned, the following table looks at the balance of outcomes. Overall, it will be seen that government retains both the legislative initiative and the ultimate choice as to whether to accommodate English opinion – either by accepting amendments, or (in the Rifkind model) by making concessions to obtain a second reading. A government without an English majority would have to negotiate to get its England-only legislation through, but could not have such legislation forced upon it.

Table 6.1
Balance of government power and English voice, Rifkind model vs Clarke model

Government power English voice provided by which model?
To initiate legislation		Both
To decide whether content of bill is UK, GB, E&W or England-only		Both
To decide on parliamentary route		Rifkind model, and almost inevitably in practice, as 'objective' trigger is hard to devise
	Determines whether bill progresses beyond second reading	Rifkind model
	Amends bill at committee	Clarke model
To decide whether bill gets third reading and deals with Lords amendments		Both

It is therefore possible to conclude that a measure of 'English votes on English laws' *could* be delivered at Westminster without rendering England ungovernable when the overall Commons majority did not apply to England. This is important, because such a change ought to command cross-party support, which would (rightly) not be forthcoming if it were seen to be a device to ensure that a Labour government could not govern England unless it had a majority there.

What change should be made, and why, is the subject of the next section.

7. CONCLUDING ANALYSIS: ENGLAND AND THE UNION

The United Kingdom is, as has often been observed, a union state; indeed, it is a state of different unions. Westminster is its parliament. Once it was the only parliament, but now Scotland, Wales and Northern Ireland have domestic legislatures while Westminster is, and will remain, England's only parliament.

Devolution has strengthened the sense of an English identity, and that Englishness is now beginning to seek a political expression. It is possible to make a case that the West Lothian anomaly disadvantages England. This has never happened in practice and the risk of it occurring has been exaggerated for partisan reasons. But there is a risk that it might, and the circumstances in which it does occur – a tiny government majority, perhaps based on a coalition – are not the right ones in which to try to forge a stable solution. That requires a broad consensus, as any change might so easily be presented as being driven by the search for partisan advantage. This is a roof which can, and should, be repaired while the sun is shining.

Devolution to Scotland and Wales was the response of a union accommodating to national aspirations. Making some accommodation to English opinion, even within a union in which England is the dominant partner, should not be ruled out – most certainly not by the Scots, Welsh or Northern Irish.

How to answer the West Lothian question

As the earlier analysis in this paper shows, two distinct approaches might be taken. The first, a 'devolution discount', is a pragmatic approach which does not really address the problem of principle. It is, in any event, not justifiable unless there is much more substantial fiscal devolution than presently planned: parliament sets taxes as well as passing laws, and taxation and representation must be closely linked. If however there was to be substantial fiscal devolution to Scotland (as has been canvassed by some) then a reduction in the number of Scottish MPs at Westminster is not only justifiable but inevitable.

Even if there is not significant further fiscal devolution, the issue of non-English MPs' role in the passage of purely English legislation can, and should, now be addressed. As the preceding analysis also shows, it is possible to do this without rendering England – and hence ultimately the UK – ungovernable by a party or coalition which did not have an overall majority in England. It should therefore be possible to make a change on the basis of a cross-party consensus, so that it is not seen as driven by partisan advantage.

Of the two schemes which have been proposed, the Rifkind scheme – second reading of English bills in an English grand committee – is the simpler, and would work well. However, the following amended version of the Clarke proposals would provide a more effective way of ensuring that English opinion was properly reflected in the detailed consideration of purely English bills:

1. A bill should be referred after second reading on the floor of the House of Commons to a new procedure by a vote of the House to treat it 'as if' it applied to England only (thus getting round the problem of minor or consequential effects on other parts of the UK).
2. The committee stage for such a bill should consist only of English MPs, in proportion to English party balance.
3. The committee should report to an English grand committee, which would take the report stage.
4. The whole House should determine whether the bill receives its third reading, without further amendment.

5. Subsequent stages should process as they do now.

This strikes an appropriate balance between allowing the balance of English opinion to have influence over a bill and allowing the UK government, provided it enters into a dialogue with English opinion, to do the job it must do, of governing England as well as the UK as a whole. (*Mutatis mutandis*, such a procedure could extend to England and Wales bills if so desired.)

Why to answer the West Lothian question: an opportunity to rethink the UK's territorial constitution

There is another way of looking at this. Devolution was a remarkable disruption to the highly centralised British state, but it changed the institutions of Westminster and Whitehall hardly at all. Westminster in particular sails on regardless, as if nothing had changed. It has spawned three new legislatures – each with its own legitimacy and each in its way entrenched in that vague but powerful framework which gets called the British constitution – but this reality is in no way reflected in how Westminster sees itself. When it looks in the mirror, it is simply told it is the most sovereign of all.

Instead, Westminster needs to find ways to recognise that it is both the union parliament and the English parliament, but also that it is not the domestic legislature for the rest of the union. The first element of that has already been proposed by the Commission on Scottish Devolution: embed the Sewel Convention – that Westminster does not legislate on devolved matters without the consent of the devolved bodies – into its standing orders, so that it is recognised by parliament as well as government. The second is to provide a procedure under which England's parliament can be seen to pay heed to English voices on English domestic laws.

Fixing the West Lothian question is a necessary change to the UK's territorial constitution, but it is not a sufficient one. Two elements are lacking: better articulated governance for England, and a persuasive account of the British union. The two are connected.

The governance of England

The decentralised power brought by devolution has proved popular. Of course, devolution built on pre-existing national institutions in Scotland and Wales, and is connected with feelings of national identity. But decentralisation is not solely about accommodating national identity: it is also about ensuring that government decisions reflect local circumstances and preferences. Nor need it build solely on national institutions. Some of the counties and cities of England are of a similar size to small states or even nations.

Lessons can be drawn from the failure of the regional devolution project for England. The first is that power cannot simply be handed down but must be adopted and welcomed: devolution must meet a demand. The demand from some places will be greater than others – and this is not a problem.

Devolution in England must build on pre-existing institutions. That does not mean the 10 standard regions. These have little local resonance, and in any event their administrative structures are being dismantled. It can only mean local government, perhaps banding together with some additional elected governance (say, a city-region mayor). This has worked for London, and there is no reason why it cannot work for Manchester or Birmingham.

Such devolution is bound to be asymmetrical and untidy. Communities do not naturally fit the Procrustean bed of Napoleonic governmental design: indeed, asymmetry is more a virtue than a flaw, so long as there is a clear vision of what causes the British state to hang together.²⁴

A fuller understanding of the British union

Much discussion of the British union focuses on its apparently fissiparous territories. Most immediately, the election of nationalist politicians to office in Edinburgh for two successive devolved elections is leading to a referendum on whether Scotland should leave the United Kingdom altogether and become an independent state. Some commentators²⁵ see the disintegration of the union as inevitable: the imperial project is over and what else would keep Britain together?

Nothing is preordained in politics. Multinational states are common, and indeed few states are wholly or solely identified with a single traditional nationality. Most have to make some accommodation to multiple identities, and for many this is a major issue. Nevertheless, splitting up is an exceptional event.

But a clear, coherent, generally shared, positive answer to the question of why Britain and the UK should hang together is not obviously to hand. One reason for its absence has been the dominance of England in the UK. When England is home to 85 per cent of the population, and has no separate political institutions, and when many English people do not distinguish very clearly between England and Britain (as they have no need to), it is easy to confuse Britain or indeed the UK with a kind of greater England.

However, under the pressure of greater differentiation, that is changing. Indeed, the emergence of a distinct England demands a clearer formulation of union – in fact, a coherent sense of the wider British and UK union as not just a greater England *can only* be properly formulated when there is recognition of England as well as the other nations in the UK.

That formulation needs to consist of more than simple practical accommodation to different national demands. It is now beginning to emerge and appears to have three main aspects, each with its own institutional expressions, and in relation to each of which there are substantial, open policy questions and choices.²⁶

The UK is clearly a **political union**, and a state for international law purposes. The principal institutions expressing this are the monarchy – still important for many people – parliament itself, and the bodies which discharge the UK's international functions, notably the armed forces and the foreign service. The main open policy questions concern the internal workings of a political union in a multinational state – West Lothian, most obviously, but also the effectiveness of the machinery of intergovernmental and inter-parliamentary working.

That the UK is an **economic and monetary union** is taken for granted (bizarrely enough, it is accepted even by those who would abolish the political union). The negotiators of the Anglo-Scottish Union of 1707 were exponents of a single market – no doubt as difficult to put into practice then as the European single market today. But that project was highly

24 Procrustes notoriously cut or stretched his guests to the length of the bed. The same treatment, applied by Theseus, was the death of him.

25 See for example the writings of Tom Nairn.

26 This analysis borrows initially from the work of the Commission on Scottish Devolution.

successful and the UK is now a closely integrated single market, with a single monetary policy, very similar labour markets, complex cross-border supply chains and so on. The public institutions which express this form of union are the Bank of England, the FSA and its successor regulators, HM Treasury and other regulatory bodies, such as those which deal with energy companies.

There are open policy questions in relation to the economic union too. To what extent do, or should, decentralised policy decisions impact upon it? They must – all government action is, in one sense, an interference with the free operation of markets. But how much distortion and consequent economic inefficiency is acceptable or desirable in the interests of meeting differing political preferences? This applies particularly to tax decentralisation, where the UK approach has been cautious so far. But that genie is out of the bottle: a range of possibilities can be considered, each with costs and benefits including, as we have seen, potential effects on representation within the political union.

Fiscal transfers are an inevitable concomitant of a stable monetary union, but how large they are and how they are justified is related to the least well-defined aspect – the **social union**. This might be taken to mean simply that people in the UK share a common language and a high degree of mobility, so that personal, family and professional connections across the country are numerous and deep. It will also have a cultural aspect, which will have institutional expression in bodies as diverse as the BBC or the research councils.

But the most tangible element of a social union is social protection, or social insurance. Because this is part of the redistributive function of the state, it is typically discharged at a union or federal level in most countries. That has been UK practice: risks have been shared and resources pooled across social classes, age groups and geographical areas. Risk-sharing carries obvious benefits, but again there are choices to be made: just how much equalisation is appropriate, and to what extent should geographical areas be reliant on their own resources to support benefit payments or other welfare services, and how does that relate to a contributory or insurance principle? That is in turn linked to the scope for fiscal decentralisation inside an economic union.

Can there be a vision for the British union?

What the UK has so far lacked is a coherent, internally consistent account of the British union which takes into consideration – as it now must – that all of the nations in the union, even England, have or are seeking some form of political self-expression. Such an account will be radically asymmetric: England's relationship with Britain will be markedly different from the others'; but each will have its own peculiarities, notably the special situation of Northern Ireland. Nor should it be stationary: all such relations will evolve, and in the UK that evolution is very evident at present. Devolution created the need for such a narrative. Scottish nationalism made it politically imperative. Perhaps it is fitting that it is the awakening of England as a political community that may now make it possible.

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ANNEX 1: GENERAL ELECTION RESULTS AND THE WEST LOTHIAN QUESTION

1832–1918

Elections of this period offer limited guidance for the 21st century. Despite the wide extension of the vote in 1918, none was on the basis of universal suffrage. The UK included the whole of Ireland, which returned around 100 members to Westminster, and Scotland and Wales between them another 100, compared to England’s 456. There was therefore a reasonable chance that the party which gained a majority in England might not have one in the UK, notably because of Irish votes.

Of the 21 elections in this period, 15 produced governments that had majorities in England as well as the whole country. In two other cases, 1837 and 1847, the UK result was a Liberal government, even though the Conservative party had a small majority in England. In both of these elections, it was Irish members who made the difference: the Conservatives had a majority in Great Britain, and indeed would have had a majority in Great Britain and Northern Ireland, had the latter existed.

In two elections, 1885 and 1895, Irish Nationalists held the balance of power at a UK level, but in each case the Liberal and Conservative parties respectively had majorities in both England and Great Britain.

The results of the two elections of 1910 were close, and are given below.

Table A1
General election results,
January 1910

	Conservative & Liberal Unionist	Liberal	Labour	Nationalist and other	Total
England	233	188	33	2	456
Wales	2	27	5	0	34
Scotland	9	58	2	1	70
Ireland	19	1	0	81	101
<i>Of which Ulster</i>	17	1	0	6	24
Universities	9	0	0	0	9
GB	253	273	40	3	569
<i>GB plus Ulster</i>	269	274	40	6	593
UK	272	274	40	84	670

Table A2
General election results,
December 1910

	Conservative & Liberal Unionist	Liberal	Labour	Nationalist and other	Total
England	233	187	34	1	456
Wales	3	26	5	0	34
Scotland	9	58	3	0	70
Ireland	17	1	0	83	101
<i>Of which Ulster</i>	17	1	0	6	24
Universities	9	0	0	0	9
GB	254	271	42	2	569
<i>GB plus Ulster</i>	261	272	42	8	593
UK	271	272	42	85	670

These are the only examples in this period, of 86 years and 21 elections, of a different English and GB majority. In the UK, the Liberals were (just) the largest party but the Irish Nationalists held the balance of power. They used it to sustain a Liberal government. The Conservatives and Liberal Unionists had an overall majority in England, but no party did in Great Britain, nor indeed in Great Britain plus Ulster. (Unionist predominance there would not have been enough to offset the Liberal advantage in Scotland and Wales.) Things reverted to (geographical) type in the 'Coupon' election of 1918 when the winning coalition parties had majorities in all parts of the UK except Ireland.

1922–1935

The geographical distribution of MPs shifted with the creation of the Irish Free State, reducing Northern Ireland to a (discounted) 12 MPs. Politics also changed, as Labour eclipsed the Liberal party.

In 1922, the Conservatives secured an overall UK majority: they were weak in Scotland and Wales, and had a comfortable majority in England.

The 1923 election, called on their policy of tariff reform, went badly for them. Although the largest party in the UK and England, they had an overall majority in neither, and Labour – which was the second-largest party in England as well as the UK – formed a minority government. A Labour–Liberal coalition was arithmetically possible, and it would have had a comfortable majority in England as well as the UK, as would any coalition involving the Conservatives.

By the 1924 election, however, the Liberals had collapsed, and the Conservatives had big UK and English majorities.

The 1929 election produced a more complex result. Labour was the largest party in England, Britain and the UK, but had no overall majority. The Liberals held the balance of power, and the minority Labour government needed their support for legislation; between them, these parties had a comfortable English majority.

In the 1935 election the Conservatives were back with overall English and UK majorities.

In the five general elections held in this period there were no examples in which the government of the UK was sustained in office by Scottish or Welsh votes when the opposition had a majority in England.

1945–2005

The Labour government swept to power in 1945, and did not rely on Scottish or Welsh members for its majority, having won a landslide in England.

In the 1950 election the Conservatives had fought back and Labour clung on with a tiny UK majority, as table A3 shows. England was split down the middle. National Liberal and Conservative MPs might be assumed to side with Conservatives, and between them had exactly half English seats; they and Labour had exactly the same share of the vote. In these circumstances non-English MPs are bound make the difference to the formation of a government. But the pattern of that difference is interesting (see table A4 over).

Table A3
General election results,
1950

	Conserv.	Nat Lib & Con	Liberal	Labour	Others	Total
England	243	10	2	251	0	506
Wales	3	1	5	27	0	36
Scotland	26	5	2	37	1	71
NI	10	0	0	0	2	12
GB	272	16	9	315	–	613
UK	282	16	9	315	3	625

Table A4
Potential roles of non-
English MPs, 1950

Remove Scottish MPs only	Labour holds overall majority in England, Wales and NI
Remove Welsh MPs	No overall majority in England, Scotland and NI
Remove Scottish and Welsh MPs	Conservative and Nat Lib & Con holds overall majority in England and NI
Remove NI MPs	Labour holds overall majority in GB

It's clear in this case – when England was evenly split – that Welsh MPs did determine the formation of the UK government. The numbers would not, however, have to have been markedly different for it to have been NI members who were crucial.

This government only lasted a year and the Tory governments of 1951, 1955 and 1959 all had both English majorities (and, in 1955, Scottish as well) as well as UK ones.

In 1964, however, Harold Wilson needed Scottish members to secure an overall majority of seats.

Table A5
General election results,
1964

	Conserv.	Nat Lib & Con	Liberal	Labour	Others	Total
England	256	6	3	246	0	511
Wales	6	0	2	28	0	36
E&W	262	6	5	274	0	547
Scotland	24	0	4	43	0	71
NI	12	0	0	0	0	12
GB	286	6	9	317	0	618
UK	298	6	9	317	0	630

England was again quite evenly split. The Conservatives (with National Liberal and Conservative members added) had a small overall English majority in seats. No party had a majority in England and Wales, though Labour was the largest; its GB majority of 17 was reduced to just five at a UK level by Conservative support in Northern Ireland. Had the election been much closer than a Conservative UK government might have depended on Northern Ireland Unionist members.

In 1966, Wilson's Labour party won a comfortable majority in both England and the UK.

The Conservative government of 1970 reversed this.

Wilson's minority administration of February 1974 relied on Scotland to be the largest party and in October that year his Scottish members gave him an overall majority.

Table A6
General election results,
February 1974

	Conservative	Liberal	Labour	Others	Total
England	268	9	237	2	516
Wales	8	2	24	2	36
E&W	276	11	261	4	552
Scotland	21	3	40	7	71
NI	0	0	0	12*	12
GB	297	14	301	11	623
UK	282	9	301	23	625

* 11 varieties of Unionist and 1 SDLP

The Conservatives had an overall majority in England, but not in England and Wales. They could have governed England and Wales without Scotland only if they had been able to count on Ulster Unionist support. Even had they been able to rely on the Ulster Unionists they did not have a UK majority, nor were they the largest party. Labour's 40/21 lead in Scottish seats made them the largest UK party and they formed a minority government which struggled on for nine months before improving its position somewhat in October of the same year.

Table A7
General election results,
October 1974

	Conservative	Liberal	Labour	Others	Total
England	253	8	255	0	516
Wales	8	2	23	3	36
E&W	276	10	278	3	552
Scotland	16	3	41	11	71
NI	0	0	0	12*	12
GB	277	13	319	14	623
UK	297	13	319	23	635

* 11 varieties of Unionist and 1 SDLP

Labour were now the largest party in England, and just scraped together an overall majority in England and Wales, and in the UK.

From 1979 until 1997 the Conservatives had overall UK and English majorities, but managed to turn nearly one-third of the Scottish seats into none at all.

From 1997 to 2005, Labour had comfortable overall majorities in both England and the UK.

- It is therefore possible to conclude that in the period of 60 years from the end of the second world war up to 2005 there were three elections out of 15 where the territorial distribution of the vote meant that a Conservative-voting England was run by a Labour UK government. All occurred when English opinion was split. They were:
- 1950–1951, when England was exactly evenly split and Labour's strong showing in Wales gave it a UK majority

- 1964–1966, when the Conservatives had a majority in England but Labour’s Scottish and Welsh strength overturned that at a UK level
- February–October 1974, when the same was true.

The Labour governments of 1945–1950, October 1974–1979, 1997–2001 and 2001–2005 all had English majorities or were the largest party in England.

ANNEX 2: PUBLIC GENERAL ACTS OF 2006 AND THEIR POTENTIAL SUITABILITY FOR AN ENGLAND-ONLY LEGISLATIVE PROCESS

Table B1: Analysis of 2006 public general acts

Act	Extent	England-only process?	Comment
Animal Welfare Act	Principally E&W, some S provisions	Potentially	Remove S provisions; W may be devolved
Appropriation Act	UK	No	
Appropriation (No 2) Act	UK	No	
Armed Forces Act	UK plus deps and overseas territories	No	
Charities Act	E&W plus some NI	No	Likely to be reserved in W; potential for E&W process
Childcare Act	E&W	Potentially	W provisions likely to be devolved
Children and Adoption Act	E&W with some NI	No	W provisions likely to be reserved; remove NI to make E&W
Civil Aviation Act	UK	No	
Climate Change and Sustainable Energy Act	Mostly UK	No	
Commissioner for Older People (Wales) Act	E&W but relating to Wales	No	
Commons Act	E&W	No	W material likely to be reserved
Companies Act	UK	No	
Compensation Act	E&W (some application to S & NI)	No	W provisions reserved; remove S and NI to make E&W
Consolidated Fund Act	UK	No	
Consumer Credit Act	UK	No	
Council Tax (New Valuation Lists for England) Act	England	Yes	
Criminal Defence Service Act	E&W	No	Suitable for E&W process
Education and Inspections Act	E&W	Yes	Remove devolved W provisions
Electoral Administration Act	UK	No	
Emergency Workers (Obstruction) Act	E, W, NI	No	
Equality Act	E, W, S	No	
European Union (Accessions) Act	UK	No	
Finance Act	UK	No	
Fraud Act	E, W, NI	No	
Government of Wales Act	E&W	No	

Health Act	E&W, minor NI provisions	Yes	Remove NI and W provisions
Housing Corporation (Delegation) etc Act	E, W, S	No	Small bill amending powers of E/W/S body that operates in devolved matters
Identity Cards Act	UK	No	
Immigration, Asylum and Nationality Act	UK	No	
International Development (Reporting and Transparency) Act	UK	No	
Investment Exchanges and Clearing Houses Act	UK	No	
Legislative and Regulatory Reform Act	UK	No	
London Olympic Games and Paralympic Games Act	UK, mostly	No	
Merchant Shipping (Pollution) Act	UK	No	
National Health Service Act	E&W, some S and NI	Yes	Separate W bill; remove some S and NI material
National Health Service (Consequential Provisions) Act	E&W	Yes	
National Health Service (Wales) Act	E&W	No	
National Insurance Contributions Act	UK	No	
National Lottery Act	UK	No	
Natural Environment and Rural Communities Act	E&W plus S and NI provisions	Potentially	Separate W bill
NHS Redress Act	E&W	Yes	
Northern Ireland Act	UK	No	
Northern Ireland (Miscellaneous Provisions) Act	UK	No	
Northern Ireland (St Andrews Agreement) Act c53	UK	No	
Parliamentary Costs Act c37	UK	No	
Police and Justice Act	E&W, with some S and NI	No	Potential for E&W process
Racial and Religious Hatred Act	E&W	No	Potential for E&W process
Road Safety Act	UK	No	
Safeguarding Vulnerable Groups Act c47	E&W, some NI	Potentially	If NI provisions removed and subject matter confirmed as devolved in Wales

Terrorism Act	UK	No	
Terrorism (Northern Ireland) Act	UK	No	
Transport (Wales) Act	E&W	No	
Violent Crime Reduction Act	E&W, some UK	No	Potential for E&W process
Wireless Telegraphy Act	UK	No	
Work and Families Act	Mainly E, W, S	No	
	55 Acts of Parliament	45 not suitable for English process; up to 10 potentially could have been made English-only by removing Welsh provisions	7 potentially suitable for E&W process