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The Future of the Union

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Front cover shows (left to right):

Owain Glyndŵr (c.1349-c.1415). A direct descendant of the Princes of Powys (mid-Wales) and of Deheubarth (south-west Wales) Glyndŵr led the conventional life of a Welsh nobleman assimilated to English government until the late 1390s. But a quarrel in the late 1390s with Lord Grey de Ruthin, a Norman baron, over landownership in north-east Wales turned Glyndŵr into a rebel with a cause. He led the national revolt that spread throughout the country from 1400 onwards and, aided by the French, he won several major victories over English forces.

Edward I, King of England (1272-1307) whose expansionist military campaigns sought to abolish the sovereign powers enjoyed by the Scottish Crown and the Welsh dynastic princes.

James Stuart who succeeded to the throne of Scotland in 1567 when he was a year old. From the early 1580s onwards, as James VI, he ruled in Scotland. The union of the crowns, following the death of Elizabeth I in 1603, entailed a move to the south for the Stuart dynasty and England's new monarch ruled as James I. The Westminster parliament rejected James's proposal that his title should be 'King of Great Britain'.

Edward Carson leader of the Irish Unionist Parliamentary Party (1910-21) and impassioned opponent of Home Rule for Ireland (self-government within the UK). His oratory gave a focus to Unionism and in 1912 Carson established the Ulster Volunteers, a loyalist para-military group. He accepted Irish partition (1922) reluctantly. Six counties in the north became the British province of Ulster while the rest of the island of Ireland formed an independent state.

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INTRODUCTION

by Hywel Williams

Debate about a country's constitution should reflect the political traditions, economic circumstances and social developments that shape the life of a nation. Elected politicians and constitutional lawyers, along with the bureaucrats who offer advice and the parliamentary counsel that draft legislation, ponder the clauses and sub-clauses of parliamentary bills when circumstances dictate a constitutional change. This is the world of the so-called "constitutional expert"—a rarefied habitat, one in which the semicolon rules and where the placing of a comma can dictate the expenditure of billions. But a constitution is surely too important a matter to be left to constitutionalists alone. The clarity that can guide us through the legislative thickets should be the result of a certain vision, one which is informed by an understanding of the past and also guided by idealism about a country's future. Britain's contemporary debate about the future of the United Kingdom's constitution needs a deeper appreciation of why these wider values matter, and especially so in regard to social and economic issues. It was after all a dedicated Unionist, Adam Smith, who penned *The Wealth of Nations*.

The currents of history that have shaped the constitutional, legal and political entity known as the United Kingdom of Great Britain and Northern Ireland are unusually deep. That particular kingdom came into being in 1922 following the secession of most of the island of Ireland. Its predecessor, the United Kingdom of Great Britain and Ireland, was formed in 1801 after the Irish parliament voted for self-abolition and the merger of the Kingdom of Ireland with the Kingdom of Great Britain. It was the Act of Union (1707) between Scotland, hitherto an independent kingdom, and the Crown of England that had led to the formation of a single British kingdom. But 1707 was far from the first example of the word "British" being used in an institutional context. In 1603 James VI of Scotland succeeded to the throne of England where he reigned as James I. This was a union of two crowns, a dynastic affair embodied in the king's person, rather than an Anglo-Scottish constitutional merger. But James was a far-sighted monarch. He had managed Scottish parliaments with conspicuous success in the 1590s and shortly after his accession he informed the Westminster parliament that he wished to be styled "King of Great Britain". That idea got a dusty response from English parliamentarians. James used his preferred title in some royal proclamations but it lacked parliamentary approval and therefore had no legal standing so far as the laws of England and Wales (and those of Scotland) were concerned.

Two legislative Acts (1536 and 1543) sought to bring an English order to Wales' complicated relationship with its neighbour to the east. Edward I's invading army had defeated the forces loyal to Llywelyn ap Gruffudd, Wales' last native prince, in 1282 and the iron ring of castle fortresses that he built in North Wales sought to crush any notion of Welsh independence. But Welsh law had continued to be administered alongside English law. Henry VIII's legislation made sure that it was the law of England that had a unique authority in Wales. The simultaneous creation of parliamentary constituencies gave Wales its first Westminster representation while also ensuring a career ladder for Welsh ambitions.

The British Constitution encapsulates therefore the distinctive histories of four nations, one of which has enjoyed predominance within the Union. A bird's eye view of the two islands, Great Britain and Ireland, in the year 700 reveals a uniform pattern both politically and economically. Wherever we look there are kings and the kingdoms they rule are sometimes tiny. Economic activity is largely predatory, dominated by

cattle-thieving and geared to the harsh demands of a subsistence existence. If we look at the archipelago of the British Isles three hundred years later the situation is completely transformed. One kingdom, that of Wessex, has grown to greatness at the expense of all its Anglo-Saxon neighbours and the royal House of Wessex is the dynasty that rules a united kingdom of England. In the sophistication of its machinery of government and legal apparatus the English kingdom of circa 1000 has no equal in western Europe and its well-equipped navy gives the monarchy an international stature. This is a centralist state, perhaps the first example of its kind. The king's will permeates the kingdom with an ease unknown elsewhere in Europe and the treasury's coffers are full. By the early eleventh century England has become western Europe's richest state. The king's subjects grumble about taxation but they invariably pay. So far as the history of the next millennium is concerned the pattern of English predominance within the British Isles has been set. The contrast with Scottish, Welsh and Irish historical fortunes has been profound. Unionists, nationalists and devolutionists alike seem strangely insouciant when considering the dismal contemporary truth that in Scotland and Wales two-thirds of the national economy is accounted for by government expenditure.

Attention to the long view seems a necessary antidote to the present day scramble following David Cameron's announcement that he proposes a "new and fair" constitutional settlement for the whole of the United Kingdom. The referendum held in Scotland on September 18 delivered a result in favour of the Union's continuance and on the following day David Cameron announced the formation of a commission, headed by Lord Smith of Kelvin, tasked with consideration of how best to deliver further powers to the Scottish parliament. Once the commission has delivered its report, a White Paper setting out the United Kingdom government's legislative proposals will then be published before the General Election, due to be held in May 2015.

The issue of "English votes for English laws" (EVEL) has long since been a Conservative Party policy and the question of its coherence dominates the wider British constitutional debate. For some it has the appeal of symmetry. Representative bodies in Belfast, Cardiff, Westminster and Edinburgh will pass the laws that apply to their own territories, while the issues that bind the kingdom together, such as foreign affairs and defence, will be the preserve of the Westminster parliament in which all the nations will be represented. This would be in effect a federal solution but its basis is questionable. Is it possible to define an "English law" in so narrow a manner? There are very few legislative enactments for England that do not have some implications for other parts of the United Kingdom and EVEL, however symmetrical its appearance, is surely a recipe for future wrangling rather than the permanent settlement of Mr Cameron's imagining.

The pattern of Britain's constitution, expressed in many forms and at different times, has endured because it has been so uniquely malleable. It has adapted itself to the needs of the people while also expressing the wisdom of the learned. The pages that follow are a contribution to the next chapter in that noble story of liberty. *The Future of the Union*, together with the conference that accompanies its publication, has been made possible by an anonymous benefactor whose generosity is gratefully acknowledged by the Legatum Institute Foundation.

THE POLITICAL CONSTITUTION OF UNIONISM

by Vernon Bogdanor

The United Kingdom was formed through the coming together of four nations—England, Wales, Scotland, and Ireland. Unlike many continental states, it came into existence less through the growth of a single national consciousness than as the outcome of a series of historical contingencies. Wales came to be incorporated into England by Acts of Parliament in 1536 and 1543. Scotland became part of the kingdom as a result of a treaty between two independent states—England and Scotland—signed in 1706, and then ratified by the English and Scottish parliaments in 1707. Ireland was made part of the kingdom by Acts of Union passed by the British and Irish parliaments in 1800. But, in 1921, the Anglo-Irish Treaty provided for the independence of Ireland with the exception of the six counties of Northern Ireland, which were to remain part of the United Kingdom.

The United Kingdom was created by ordinary Acts of Parliament, not by a constitutional document. It was, in the words of one political scientist, “not the product of a compact, drafted and signed by its constituents, as is usually the case in a country with a written constitution. It is an agglomeration created by the expansion and contraction of a territorial power in the course of a thousand years.”¹

Union was achieved by placing England, Wales, Scotland, and Ireland under a common and supreme parliament. But Westminster had begun as the English parliament, and the government of the United Kingdom is marked by the dominance of England, by far the largest of the components of the United Kingdom. Indeed, the formation of the United Kingdom came about largely as a result of the expansion of England through a process of conquest, treaty, and negotiation.

England itself had come to be unified far earlier than any continental state, and there may already have been a strong sense of English consciousness and national identity before the Norman Conquest in 1066. The heart of England lay in London and the south-east, and power came to be centralised there. This left little room for provincial or regional loyalties, although it was not inconsistent with a firmly rooted shire system of local government which, created in the tenth century, lasted substantially unchanged until the local government system of England was reorganised in 1974.²

But it is impossible to give a precise date for the formation of the English state. “England”, one historian has suggested, “is unique among the states of Western Europe in that it cannot claim a recorded foundation. We can say that England became a state sometime between 899 and 956, but the English omitted to make any record of the fact.”³ This is of fundamental importance for British constitutional development. The English state has no document recording its foundation and therefore no source of authority, such as a constitution, capable of limiting its power. The English state never began, but instead evolved. Its only principle seemed to be the supremacy of Parliament, and this principle was retained when the state expanded to include Wales, Scotland, and Ireland. As the constitutional historian Maitland once said, we have substituted the authority of Parliament for a theory of the state. It was therefore never clear whether the United Kingdom had melded together different identities into a single nation with a single identity, or whether it was a multinational kingdom, in Gladstone’s words, “a partnership of three kingdoms, a partnership of four nations”.⁴ The conflict between these two standpoints lay at the heart of the debate on Irish Home Rule and of devolution in the late twentieth century.

Old Westminster Hall



But the supremacy of Parliament did not mean that government had to be uniform across the kingdom. Whatever the disadvantages resulting from the absence of a codified constitution or overarching document delineating the outlines of the state, there was one advantage, that it enabled flexibility on the part of the rulers. So Britain became, not a unitary state, “built up around one unambiguous political centre which enjoys economic dominance and pursues a more or less undeviating policy of administrative standardisation”, but a “union state” which could preserve “some degree of regional autonomy and serve as agencies of indigenous elite recruitment”.⁵ The Treaty of Union provided that Scotland would retain its legal system; and, from the late nineteenth century, governments were prepared to accept a diversity of political arrangements in the United Kingdom. In 1885 Parliament established a Scottish Office, its aim being, as Prime Minister Lord Salisbury told the first holder, “to redress the wounded dignities of the Scotch people—or a section of them—who think that enough is not made of Scotland”;⁶ while Gladstone called it “a little mouthful of Home Rule”.⁷ Scotland, therefore, had a separate legal system and separate executive but, until the onset of devolution in the 1990s, no separate legislature. In Wales there was a continuous process of administrative decentralisation from the 1880s until 1964, when the office of Secretary of State for Wales was created.

From 1885 until 1914, however, politics at Westminster was largely dominated by the demand for Irish Home Rule on the part of Irish nationalists and the determination of Unionists to resist it. There were at the

same time movements for Scottish and Welsh Home Rule, supported by many Liberals and by the founders of the Labour Party, Keir Hardie and Ramsay MacDonald. But there seemed little popular demand for Home Rule in Scotland or Wales, and before 1914 these movements seemed imitative and rather artificial. They died away after Irish MPs removed themselves from Westminster in 1918.

With the onset of mass unemployment between the wars, Labour, the dominant party in Scotland, came to believe that strong centralised government was needed to combat it, and the party searched for measures of state control to deal with the slump. The trade union wing of the Labour Party also came to be hostile to devolution because of its belief that national wage bargaining was needed to maintain wage levels in Scotland. Tom Johnston, Secretary of State for Scotland during the years of Churchill's wartime coalition and a former Home Ruler, warned, after the Second World War, that a Scottish parliament might have nothing to administer but "an emigration system, a glorified Poor Law and a graveyard".⁸ As Secretary of State from 1941 to 1945, he had shown that the machinery of the centralised state could be used to benefit Scotland. After the war, Scotland benefited from the welfare state measures of the Attlee government. This confirmed the Unionism of the Left, which argued that only a strong Labour government in London could ensure equality of treatment between the different parts of the United Kingdom.

In Wales nationalism proved divisive, pitting the industrial south of Wales against the more rural and Welsh-speaking north, and in 1896 Lloyd George, seeking to create a representative Welsh body, was rebuffed by the industrial south. Industrialism was tying the economy of south Wales more tightly to the English economy, so making Home Rule appear economically retrograde. High unemployment made Home Rule appear as irrelevant in Wales as in Scotland. "Is it not rather cruel", Aneurin Bevan asked the House of Commons in 1946, "to give the impression to the 50,000 unemployed men and women in Wales that their plight would be relieved and their distress removed by this constitutional change? It is not socialism. It is escapism. This is exactly the way in which nation after nation has been ruined in the last 25 to 50 years, trying to pretend that deep-seated economic difficulties can be removed by constitutional changes."⁹

The Right argued, as it had done when combating Irish Home Rule, that devolution would break up the state. It emphasised *sovereignty*. The Left by contrast emphasised *power*. Centralised government was needed to remedy territorial disparities and inequalities. The two views coalesced from the 1920s to the late 1960s, forming a powerful rationale for centralised government.

From the late 1960s, however, it no longer appeared that the two major parties—Labour and the Conservatives—would be able to secure Scotland's interests. Economic growth was sluggish and regional policy seemed ineffective. Centralised government no longer seemed capable of delivering economic progress. In addition, the discovery and commercial exploitation of North Sea oil in the 1970s seemed to undermine the Unionist argument that continued membership of the United Kingdom was essential if the Scottish economy was to prosper. Instead, Scottish nationalists said that the choice was between a poor United Kingdom and a rich Scotland.

The combination of political disillusionment with centralised government, and optimism engendered by oil, found expression in support for the Scottish Nationalist Party (SNP), which in the general election of October 1974 secured 30 percent of the Scottish vote and 11 out of Scotland's 71 seats. The party was coming to threaten Labour in its Scottish heartlands and it was largely for this reason that Labour produced proposals for devolution. In the 1970s these proved abortive, but during the long period of Conservative rule from 1979 to 1997, while a majority in England supported the Conservatives, Scotland remained loyal to Labour. Indeed, at no other time in the whole of the twentieth century was there so prolonged a

period of geographically one-sided government in Britain. After 1987 the Conservatives, although enjoying a large overall majority in the Commons, had the support of less than a quarter of Scottish voters and around three-tenths of Welsh voters. The majority in Scotland and Wales believed that Conservative policies of competitive individualism were irrelevant to their needs, while the Scots particularly resented the Community Charge, the so-called poll tax, introduced in Scotland in 1989, one year before it was introduced in England and Wales. In the years of Conservative rule, therefore, Scottish and Welsh national consciousness developed, and pressure for devolution increased. It was largely for this reason that the Labour government led by Tony Blair, which came to power in 1997, proceeded to establish a parliament in Scotland, a national assembly in Wales, and a power-sharing assembly in Northern Ireland.

A main purpose of the policy of devolution was to contain Scottish nationalism by showing that Scottish national identity could flourish within the framework of the United Kingdom. The Scottish Parliament and the other devolved bodies were, by contrast with the House of Commons, to be elected by proportional representation, with the hope that separatists would not, in a multi-party system, be able to win on a minority of the vote.

In 2011, however, the SNP succeeded in doing just that—winning an overall majority in the Scottish Parliament on just 44 percent of the vote. The British government’s response was a referendum on independence, held on September 18, 2014. The outcome of the referendum was a 55 to 45 majority against independence. But a week before the vote, opinion polls had shown the pro-independence vote slightly in the lead. The three party leaders then made a “vow” to give the Scots extra powers over taxation and welfare if they rejected independence.

This vow, however, was made without consulting the House of Commons, 533 of whose MPs, in a body of 650, represent English constituencies. English MPs from the ruling Conservative Party declared that they would not support further powers unless something was done for England. So, if the referendum answered, for the time being at least, the Scottish Question, it resurrected the English Question.

England contains around 85 percent of the population of the United Kingdom but is also the only part of the UK without a parliament or assembly of its own. England is therefore the anomaly in the devolution settlement. This, it is argued, puts it at a disadvantage in Westminster. Policy areas such as education, health, housing, and transport are now devolved to Scotland, Wales, and Northern Ireland, and so Westminster MPs can no longer vote on these matters. But MPs from these areas continue to vote on English education, health, housing, and transport, which remain the responsibility of Westminster. A government, therefore, could be in a minority in England and yet pass legislation altering English education, health, housing, and transport. That, for many, is unfair. This situation has been labelled the West Lothian Question after the MP who first raised it, Tam Dalyell, formerly MP for West Lothian. The West Lothian Question asks how it can be fair that, while English MPs can no longer vote on matters affecting West Lothian in Scotland, Scottish MPs can continue to vote on matters affecting West Bromwich in England. This question merges into the broader English Question, which asks how England is to secure its interests in the multinational state that the United Kingdom has become. If English interests are neglected, the United Kingdom could come under threat, not from Scotland but from England. Admittedly, English nationalism has not yet proved a political force of any moment, since many in England still treat being English and being British as interchangeable. But that could change. Some would argue that the United Kingdom Independence Party (UKIP) is really an English nationalist party, since the bulk of its support comes from England. Significantly, UKIP has called for the setting up of an English parliament.¹⁰

The Houses of Parliament



How, then, is the English Question to be answered? The obvious logical answer is federalism. But the trouble is that the English, while resisting the integration of the non-English parts of the United Kingdom, have also resisted federalism.

Federalism could take two forms. The first is in the form of devolution to the regions of England. That would provide a logical answer to the West Lothian Question only if it were to take the form of legislative devolution. No one, however, believes that it would be sensible to have different laws in the north-west and the south-east. And in any case, there seems little support for regional devolution in any form. In a referendum in 2004 voters in the north-east, thought to be the area most sympathetic to devolution, rejected a proposal for non-legislative, executive devolution to a regional assembly by four to one. In England there is little regional feeling; the regions are little more than ghosts.

The second form of federalism would be an English parliament, parallel to the devolved bodies in Scotland, Wales, and Northern Ireland. This proposal has some popular support and is, as we have seen, advocated by UKIP. But there is no federal system in the world in which one of the units represents over 80 percent of the population. The nearest equivalent is Canada, where 35 percent of the population live in Ontario.

The case against an English parliament was best summed up by the Royal Commission on the Constitution—the Kilbrandon Commission—in 1973:

A federation consisting of four units—England, Scotland, Wales and Northern Ireland—would be so unbalanced as to be unworkable. It would be dominated by the overwhelming political importance and wealth of England. The English Parliament would rival the United Kingdom federal Parliament; and in the federal Parliament itself the representation of England could hardly be scaled down in such a way as to enable it to be outvoted by Scotland, Wales and Northern Ireland, together representing less than one-fifth of the population. A United Kingdom federation of four countries, with a federal Parliament and provincial Parliaments in the four national capitals, is therefore not a realistic proposition.¹¹

Federal systems in which the largest unit dominates have little chance of survival. That is the lesson of the former USSR, dominated by Russia; Czechoslovakia, dominated by the Czechs; and Yugoslavia, dominated by the Serbs. Federalism, therefore, in either of its two forms, is not a plausible solution to the English problem.

An alternative answer to the English Question is “English votes for English laws”. This proposes that only MPs representing English constituencies should be able to vote on English domestic legislation. It has been the official policy of the Conservative Party for some years, and was reiterated by the party in the immediate aftermath of the Scottish referendum. It seems, at first sight, logical. If Scottish domestic legislation is in the hands of the Scots, Welsh domestic legislation in the hands of the Welsh, and Northern Irish legislation in the hands of the Northern Irish, why should not English legislation be in the hands of the English?

But the proposal is in fact incoherent. For it would mean that, whenever a government depended upon Scottish MPs for its majority—as could happen if a Labour government, dependent on Scottish votes, were to be elected in 2015—the Commons would become bifurcated. There would be a United Kingdom majority for foreign affairs, defence, economic policy, and social security; but an alternative English majority for health, education, and other devolved matters. So English votes for English laws would undermine the principle of collective responsibility according to which a government must be collectively responsible to Parliament for all the policies that come before it, not just a selection of them. A bifurcated government would undermine this principle.

A modified form of the proposal has been put forward by Sir Malcolm Rifkind, the former Conservative Foreign Secretary, and the McKay Commission, which reported in 2013. This proposal envisages sending all English legislation to an English Grand Committee, with membership proportional to the strength of the parties in England. A government without an English majority would then have to negotiate with the Committee and sometimes accept defeat, analogously, Rifkind has argued, to the position of a minority government such as the Wilson government of 1974.

But under the Rifkind/McKay proposal, a government would regularly be unable to secure whole swathes of its legislation—on education, health, and other matters devolved to Scotland. Moreover, the English Grand Committee would in effect seek to legislate on matters such as health and education, which have revenue-raising implications, but it would not have control over taxation. No government would agree to alter taxes for policies with which it fundamentally disagreed. So bifurcated government would become deadlocked government.

It is in fact not possible to separate English matters from Scottish. Even if all control of income tax were devolved to Scotland, the bulk of Holyrood's revenue would still come from Westminster. This means that any variation in spending on an English service such as health would have a knock-on effect in Scotland. Suppose that there is a cut on health spending in England. The block grant to Scotland would be correspondingly reduced since it is fixed as a percentage of English expenditure. That is bound to be the case since England is the dominant part of the United Kingdom; and it explains why Scottish MPs must continue to vote on what seem to be English issues. As the Royal Commission on the Constitution concluded in 1973, "Any issue in Westminster involving expenditure of public money is of concern to all parts of the United Kingdom since it may directly affect the level of taxation and indirectly influence the level of a region's own expenditure."¹² There are, therefore, no specifically "English" domestic matters involving public expenditure.

But there is an even deeper reason why English votes for English laws is misguided. It is a separatist proposal, whose effect would be to separate two systems of government—the English and the Scottish—which must be brought together if the Union is to be strengthened. It is no accident that the SNP has a settled policy of not voting on "English" laws, for it is an openly separatist party. It is odd to find the Conservatives, a Unionist party, seeking to follow suit. Devolution, while an overdue and necessary reform, has made many English politicians believe that Scotland is another country with which they need not concern themselves. But constitutional reform should aim to link the various parts of the United Kingdom together, not separate them.

There is, of course, an English Question. But, as long as England rejects federalism, there can be no constitutional solution to it. The United Kingdom is bound, under these circumstances, to remain asymmetrical. Asymmetry, indeed, is the price that England pays to keep Scotland within the Union. In the nineteenth century England refused to pay this price in relation to Ireland, resisting Home Rule, with disastrous results. It is in any case a fallacy to believe that the English voice is not heard at present. Of the 650 constituencies represented at Westminster, 533 are English. England remains the dominant nation. It has no need to beat the drum or blow the bugle. If it does, it will strain the devolution settlement to breaking point. At present, the English seem to accept devolution in Scotland and Wales, but do not seek it for themselves. The United Kingdom rests on such continued restraint by the dominant nation. Unionists would do well to remind themselves of Disraeli's famous dictum that England is governed not by logic but by Parliament.

The English Question can, however, be alleviated, though not fully answered, by electoral reform and by political reform. The West Lothian Question has become so prominent because of the imbalance in strength between the Labour and Conservative parties in Scotland. In the 2010 general election, Labour won 41 of Scotland's 59 constituencies, the Conservatives just one. But this difference in representation was grossly exaggerated by the electoral system. Labour won 42 percent of the Scottish vote, the Conservatives 17 percent. A proportional system would have given Labour 24 seats and the Conservatives 10. Proportional representation, therefore, would alter the dynamics of the conflict between England and Scotland and make it far more manageable.

In England the solution must be sought not in constitutional change but in political reform. At present, Scotland through its parliament enjoys a great deal of political leverage; so also does London through its directly elected mayor, even though the mayor has but limited statutory powers. The rest of England, however, has much less leverage. This is particularly the case with the great cities of the Midlands and the north—Birmingham, Manchester, Newcastle, etc.—which show no inclination to favour regional

devolution, and which—with the exception of Liverpool—have rejected directly elected mayors. These cities claim that they face even more serious social and economic problems than Scotland, and that they lack the political leverage to ensure that Westminster does something about them.

These problems can be alleviated by devolution in England, not to new regional authorities, for which there is little demand, but to local government. There is a growing consensus in favour of fiscal devolution to local authorities, perhaps grouped together into city regions. Devolution would allow local authorities to keep a proportion of their tax receipts from property taxes, devolve the business rate, and perhaps also remove the constraint on increases in council tax.

The difficulty with such a solution, admittedly, is that local government, as at present organised, is unloved. It certainly does not provide the same focus of loyalty as the Scottish Parliament. Turnout for local elections, at between 30 and 40 percent, is around the lowest in Western Europe. This means that a precondition of devolution in England must be a programme of reform and modernisation of local government so that it can inspire the enthusiasm needed for a radical transfer of power from the centre.

The political culture in England is at present profoundly centralist. The English object to the “postcode lottery” whereby some areas enjoy better welfare services than others. That, however, is a logical consequence of decentralisation. It is contradictory to support decentralisation or devolution and to object to the possibility, at least, of unequal provision of services.

In addition, the English blame ministers for whatever goes wrong in public services, even when what goes wrong was the responsibility of local government. In the 1970s Labour Prime Minister James Callaghan began a “Great Debate” on education which resulted in the centralisation of much educational policy. The Great Debate was launched in response to parental complaints about the quality of education that their children were receiving. Parents were not assuaged by being told that they should consult their local councillor or chief education officer. Similarly, when there were recent anxieties over Islamic infiltration in Birmingham schools, the public blamed the government, not local authorities, even though local authorities run most schools. It is natural for ministers to respond that, if they are to be held responsible, they must take the powers to match those responsibilities. That means centralisation. It is, therefore, the people, not the politicians, who are primarily responsible for our centralised political culture; and it is largely for this reason that England has become the most centralised country in Europe. The upshot of this is that the English Question may not be answered for some considerable time.

* * *

In 1997 the Welsh Secretary Ron Davies declared that Welsh devolution was a process, not an event. The same is true, surely, of constitutional reform as a whole. Issues such as the future of the Human Rights Act, the role of the non-elected House of Lords, the strengthening of local government in the great cities of the Midlands and the north, and Britain’s role in Europe badly need clarification.

At Edinburgh in 2013, Labour Shadow Foreign Secretary Douglas Alexander called for a Scottish Convention similar to that of 1989, which paved the way for devolution. But the future of Scotland should not be seen in isolation from that of the rest of the United Kingdom. What is needed is a United Kingdom-wide constitutional convention, with popular participation, to consider constitutional issues as a whole, and in particular how devolution can evolve in the non-English parts of the United Kingdom, and how the English can be better governed even in the absence of an “answer” to the English Question.

But before such a convention sits, it needs to be preceded by a learning process. The Scots have been thinking about their constitution for many years. Many in England have only just begun to think about it; their thoughts need to become more focused. The best way of achieving this would be through a Royal Commission, or equivalent body, which would hold hearings in different parts of the country—hearings which would be highlighted in the media. The Commission would be in the nature of a learning process, collecting the thoughts of the interested public and providing options for the constitutional convention to consider.

One obvious matter for such a convention to consider would be whether it is time for Britain to enact a constitution. Britain, after all, remains one of just three democracies, together with New Zealand and Israel, without a codified constitution. If one joined a tennis club, paid one's subscription, and asked to be shown the rules, one would not be pleased to be told that the rules had never been gathered together in one place, that they were to be found in past decisions of the club's committee over many generations, and that they lay scattered among many different documents. In addition, we would be told, some of the rules had not been written down at all—these were called conventions; we would pick these up as we went along, with the implication that if we had to ask, we did not really belong. Such a rationale might have worked in the deferential past for a homogenous and deferential society. It will hardly do for the multicultural, assertive country that Britain has now become.

In the 1950s Britain resembled a country house suitable for those prepared to live as guests. It now needs to become a genuine home for all of its citizens.

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CONFESSIONS OF A CONSTITUTIONALIST

by Dafydd Elis-Thomas

The constitution of the United Kingdom holds no mysteries as far as I am concerned, though most of its commentators indulge in mystifications about it. Just as in other developed post-imperial European apparent nation-states or state-nations, it combines elements of limited constitutional reform laced with symbolic historical accretions. As a Welsh Anglican the nearest I get to worshipping at the shrine of the “Union” is if I happen to take holy communion at Westminster Abbey on the Feast Day of St Edward the Confessor, which unfortunately does entail standing a bit too close to the tomb of Edward I.

The constitutional relationship of Wales and England within the United Kingdom was finally established in 1993 as being entirely based on current constitutional law rather than on any notion of a “union”. No great fuss was made about Schedule 2 of the Welsh Language Act 1993 during its parliamentary stages, but it did repeal the Laws in Wales Acts 1535 and 1542 as “spent enactments”, which might be read as contrary to the Act’s intention of giving effect to the principle that in Wales “the English and Welsh Languages should be treated on a basis of equality”.

That there never was an established “union” between Wales and England is clearly understood by present-day historians, but it was convenient to extrapolate the concept earlier in the twentieth century to the four nations following the failure to implement the “home rule all round” of Gladstonian Liberalism. The legislation of the Tudor period was more about ensuring the access of the emerging bilingual elite into England and Wales’s post-Principality administration following punitive restrictions after the Glyndŵr insurgency. But it did provide a new framework for Welsh shire government and constituency parliamentary representation at Westminster, as well as distinct “devolved” institutions such as the Court of Great Sessions, alongside the long “devolved” Council of Wales and the Marches—which thrives yet again in the form of the current Welsh Marches Line.

Late medieval and early modern “devolution” in distinctive institutions was always a feature of Wales’s relationship with *ardderchog o goron Lundain* (“the eminent Crown of London”), as it is described in the Mabinogi text, probably composed in its extant form in Gwynedd during its ascendancy as a Principality in the twelfth century. In the same period devolution in the administration of justice in Wales and the Marches, still denied, was achieved by Clause 56 of Magna Carta, which provided that disputes were to be settled according to English law, Welsh law, or the law of the Marches, depending on the location of the disputed property. This will no doubt feature in any celebration of Magna Carta by Welsh lawyers next year!

Another historical legacy of late medieval “devolution” is the boundary of Wales itself. By the Treaty of Montgomery 1267, Llywelyn II was recognised by Henry III as Prince of Wales and overlord of all native rulers who would do homage to him, and the holder of that title alone would do homage to the king for the Principality. His successors would also be recognised as Princes of Wales, so recognising the Principality of Wales as a constitutional entity distinct from the person of an individual prince. This was no doubt the high-water mark of late medieval “devolution”, and long-lasting in European terms, since the geographical boundary of political Wales has remained virtually the same to this day.

This short-lived Principality's prospects were damaged by military defeats from the thirteenth century but were revived by the military victory of Henry Tudor (Henry VII) and the coming to power of the Tudor royal house, when the Welsh were seen to be ascending to the Crown of London itself, as heralded by the poetic spin doctors of the time. The climax of the Tudor period saw the making of Welsh an "official language" of religion by the Elizabethan Act for the Translating of the Bible and the Divine Service into the Welsh Tongue 1563, which required that the Bishops of Wales and Hereford place copies of the Bible in Welsh side by side with the English version in every parish church in Wales—the most significant act of cultural devolution up until the implementation of Church disestablishment in 1920.

As Liberal nationalist rhetoric invoked the historic residue of Glyndŵr, so newly devolved Wales invoked a much earlier symbolism. On that historic evening in 1999 in Cardiff Bay, when Shirley Bassey and Tom Jones sang and the queen opened the first Welsh Assembly, adjacent to her royal standard and at the same height on the next flagpole, there flew the standard of the Prince of Wales. In the sovereignty of heraldry at least, the limited historical sovereignty of the Principality in the form of the arms of Llywelyn I was given full and equal recognition. With the coming of law-making powers, the arms reappeared with the queen's approval as the royal badge of Wales on all National Assembly legislation, and were incorporated, along with a representation of the monarch, in the Great Seal of Wales whose keeper is the First Minister. With the opening of the Senedd building in 2006, the National Assembly's original home next door, which now houses Assembly Members and Commission staff along with Welsh ministers during Assembly sessions, was renamed Tŷ Hywel in recognition of Hywel Dda (Hywel the Good), the king who allied with the kingdom of Wessex to oppose the Viking threat and was the originary lawgiver who gave his name to "Cyfraith Hywel" (Hywel's Law), as medieval Welsh law is often defined.

At the first royal opening of the Senedd building itself, that essential "bauble" (as Oliver Cromwell described it) of Westminster-derived parliamentary traditions—the mace—which had been denied at the earlier opening because of weak legislative powers, was presented to the queen and installed in the Siambr (debating chamber): a gift from the Parliament of new South Wales to an older South Wales. Elected Assembly Members and the judiciary processed; ceremonial guard duties were provided by members of the Welsh armed forces along with a Royal Navy vessel, appropriately HMS Westminster; and there was an RAF fly-past from Valley on Anglesey, uniting the nation in a matter of minutes. Newly re-devolved Wales had adapted its symbolism to assert itself as a political and cultural nation, albeit one with limited constitutional powers.

Reflected in its own symbolism of the Central Lobby, designed in the mid-nineteenth century in the Gothic Revival style by Sir Charles Barry and Augustus Pugin, the United Kingdom parliament is imagined as a multinational state of four nations, in the space described by no less an authority than Erskine May as "the political centre of the British Empire". This highly symbolic space was blessed in its four majestic arched entrances by which the public gain access to both Houses; these are adorned by highly ornate mosaics of the four patron saints of the four constituent nations of this imagined multinational state. Appropriately, when a member moves from the Commons chamber to the Lords, the patronage of St David is exchanged for that of St George. Perhaps intercessions might be offered to these heavenly patron saints for the future of their nations and the kingdom?

On earth, devolution in Wales has been a helter-skelter pace since 1999 of events and process. A dusted-off Wales Act 1978 from the Welsh Office library in Cathays Park in Cardiff—rejected firmly by four to one in the 1979 referendum—re-emerged as the Government of Wales Act 1998, with all its inherent defects and devoid of rational constitutional principle.

The Welsh Assembly Debating Chamber



The National Assembly, though having an aura of being a legislative and fiscal democratic body, was in fact still a single-body corporate model, with no separation of powers or accountability between executive and legislature. While Welsh local government was adopting a model where there was a proper separation of cabinet and scrutiny of it, the National Assembly mixed these functions to the extent that government officials unversed in parliamentary practices took it upon themselves to advise on democratic procedure and to refuse to allow independent legal advice to elected members on constitutional and procedural matters. Needless to say, the University Law Schools, individual members of the judiciary, not to mention leading members and senior officials of the UK parliament, provided much valued independent counsel until the situation was remedied.

Within the first two years of the National Assembly's young life, the terms "First Minister" and "Assembly Ministers" had been adopted; and although the constitutionally confused and publicly confusing "Welsh Assembly Government" (Llywodraeth Cynulliad Cymru) was the compromise announced by the First Minister Rhodri Morgan, his democratic intention of "making a distinction between the executive and legislative parts of the Assembly" was absolutely clear. Then, early in 2002, came the irrevocable step, unanimously supported by the Assembly, of adopting the recommendations of the Review of Procedure that "there should be the clearest possible separation between the Government and the Assembly which is achievable under current legislation" adopting the recommendations of the Review of Procedure in February 2002.

This resolution, enjoying all-party support, became a beacon of light to guide the Assembly through an essential agreement within Welsh Labour and across the other parties to move to a second constitution. It led the way out of the executive devolution of the first constitution of 1998, through the transitional "Legislative Competence Orders" of "Assembly Measures" in the second constitution, to a successful referendum in 2011, as a result of which Acts of primary legislation could be made. Under this model full legislative powers were conferred on the Assembly in subjects where it has competence, but with a schedule full of "exceptions" which—if and when they are removed—would give the Assembly full Act-making competence in all devolved subjects.

The key move was to incorporate within the transitional stage a referendum trigger which would make the shift to fuller competence in one encompassing second constitutional Government of Wales Act 2006. The seminal report on the powers and electoral arrangements of the National Assembly, published in March 2004 and chaired by Lord Ivor Richard, set a far-reaching and constitutionally coherent agenda that has yet to be fully implemented. However, the steps taken by Peter Hain as Secretary of State and Rhodri Morgan's political drive as First Minister to seek broad support within and beyond Welsh Labour, as well as the full-hearted co-operation between all Welsh political parties represented in the Assembly, were all crucial. So too was the subsequent coalition in One Wales Government (2007–11) between Welsh Labour and Plaid Cymru, which was marked by the growing willingness of the Welsh electorate, in both opinion polls and real polls, to give their increasingly self-determining consent.

Where to then?—as we say in Wales—and whither England? To say that this is a matter for the people of Wales and England to decide according to the right of self-determination of peoples and nations as traditionally understood throughout the twentieth century is not to avoid the question. There are certain principles based on our common histories which may be applied; not least among these, we need to make a clear distinction between the United Kingdom as reflecting an "imperial" period of our shared past and the current realities of the national lives of England, Ireland, Scotland, and Wales in Europe. Clearly this implies that a distinction be made between the governance of a devolved England and/or its historic regions and the remaining "central" government and representational structures of the United Kingdom. The United Kingdom of four nations represented a mere one-hundred-year phase of our common history. However, our geopolitical juxtaposition will always mean that we have to live together "for better, for worse; for richer, for poorer". We also need to reflect that—although some political colleagues like to refer to devolution changes as "settlements"—there can, historically speaking, be no lasting "settlement" of these "questions".

Professor James Mitchell concludes his magisterial volume *The Scottish Question* (2014) thus:

Whatever happens in the referendum, the Question will remain unanswered definitively not least because it is more than one question but crucially because it includes a series of relationships that need to be addressed anew in each generation. These relationships are, like nations, daily plebiscites. There can be no final resolution to the Scottish Question for that reason.

Nor for the Welsh, nor for the English!

A KINGDOM UNITED: FINANCIAL CONSEQUENCES AND ECONOMIC REALITIES by Dominic Lawson

In a spasm of panic after an outlying YouGov poll showed a slight lead for the Yes camp eleven days before the referendum on Scottish independence, the leaders of the three main Westminster parties issued a joint statement via the Scottish *Daily Record*. If Scots voted to continue within the Union, Messrs Cameron, Miliband, and Clegg declared, two things would follow: they would agree on “permanent and extensive new powers” for the Scottish parliament; and there would be “continuation of the Barnett allocation for resources”.

This second element of the so-called “vow”—the name chosen by the editor of the *Daily Record* rather than the party leaders—has caused particular irritation among Conservative MPs, and not just because the commitments were entered into by three Privy Councillors without the slightest consultation of the House of Commons.

The so-called Barnett Formula, based on a settlement by the then Chief Secretary to the Treasury Joel Barnett in the fraught public-spending round of 1977/8, has had the effect of giving Scots a much more generous allocation of public expenditure than any other component member of the Union. The main reason is that the allocations are based on fixed proportions going to England, Wales, Scotland, and Northern Ireland, and have taken scant account of demography, which has seen, in the intervening 35 years or so, marked increases in the English population and small ones in the Welsh and Northern Irish, and a sharp drop in that of Scotland. As Chief Secretary in 1992, Michael Portillo was unique in managing to achieve some correction to adjust for this, but the same demographic trend has continued, with adjustments to the Barnett Formula lagging so far behind that convergence between per capita expenditure within the different nations of the Union seems as remote as ever.

The result—as the late Lord Barnett himself helpfully pointed out, immediately after the three party leaders reaffirmed their allegiance to the formula he himself regarded as iniquitous—is that Scots receive £1,600 more per head of public expenditure allocated in the so-called block grant than the English. It is important to realise that this is entirely distinct from the benefits budget: that, at least, is related to need, and thus, if there were a sudden collapse in the Scottish economy, its allocation of such hand-outs would reflect that need, over and above the Barnett “allocation”.

In fact, as Alex Salmond tirelessly pointed out throughout the referendum campaign, Scotland has become wealthier, per capita, than any part of England, with the exception of London and the south-east. While that might be a reasonable argument for independence, it only emphasises the inequity of the Barnett Formula.

Yet the confidence of those Westminster party leaders in declaring the continuation of the current arrangement is explicable. First of all, this is not (yet) a dominant political issue among English voters—although it amounts to an open goal for UKIP’s Nigel Farage, which he will doubtless exploit as leader of what is effectively an English nationalist party; and while Barnett did not envisage his arrangement as anything other than a convenient way of settling departmental fights during a time of severe public-expenditure constraints, both main parties have maintained it in part out of a desire to neutralise Scottish separatism. For Labour that has been more of a party-political battle—an increasingly



unsuccessful one—to prevent its displacement in both the Scottish and the Westminster parliaments by the Scottish National Party; for Conservatives it is more fundamentally a visceral desire not to do anything which might endanger the Union.

Indeed, the precursor to the Barnett Formula was a similar arrangement known as the “Goschen Proportion”, named after the Chancellor in Lord Salisbury’s Unionist government of the 1880s, which allocated almost 14 percent of various public expenditures to Scotland, and continued at that rate even as the region’s population fell to no more than 11 percent of the total. As Professor Iain McLean of Oxford University has written:

The big problem then was Ireland, not Scotland. To try (vainly in the end) to keep Ireland in the Union, the Unionists threw money at it. This was called “Killing Home Rule by Kindness”. Not many people in Scotland wanted to secede and almost none of them were violent. But governments started to placate them, too.

On this analysis, it is not difficult to see why Wales should find itself the poor relation of the Barnett Formula: the most recent opinion polls on the matter show support for independence in Wales running at about 3 percent; and whereas the senior ranks of the Conservative Party have long been populated by visceral Anglo-Scottish Unionists, there is no equivalent Welsh Tory establishment.

Yet if the Barnett Formula, like the Goschen one before it, is defended on the grounds of “Killing Home Rule by Kindness”, what is one to make of Gordon Brown’s claim that the first part of the referendum “vow” amounts to “Home Rule for Scotland”? Or of the position of the Conservatives and Liberal Democrats that Scotland should have complete autonomy in the setting of income-tax rates, while remaining under the “Barnett allocation for resources”?

Labour’s slightly odd proposition is that the Scots’ as yet unspecified new powers should include the right to increase tax rates, but not to reduce them. One does not need to be a cynic to suspect this is because the party under Ed Miliband is deeply antipathetic to tax competition within the United Kingdom: it is committed to increasing the top rate of income tax and would not welcome the idea of a future Scottish administration wooing high earners to cross the border in a northerly direction.

But the Conservative (and Liberal Democrat) commitment to complete income-tax autonomy is in some respects even odder. First of all, they have little idea how much income tax is actually payable, as things stand, by Scottish residents. Most people pay their tax through their place of work, via PAYE, and there is a considerable flow of commuters across the border. Second, and much more fundamental, is that this form of fiscal autonomy runs counter to the central argument, put so forcibly by George Osborne and his Liberal Democrat Chief Secretary Danny Alexander, that it is inconceivable for a fiscally independent Scotland to be part of a currency union with the rest of the United Kingdom—on the grounds that the Bank of England could not be expected to guarantee debts Scotland might run up with an economic policy outside any control from Westminster.

Yet if Scotland—as the Westminster coalition parties agree—were to have complete discretion over income tax, they might through mismanagement or miscalculation cause a sharp drop in receipts. There is nothing to say that Westminster, Barnett or no Barnett, would be obliged to make up that shortfall. Fine: but if the effect of the shortfall were to create an unforeseen rise in the United Kingdom’s borrowings as a whole, it would affect the interest bill that all Britons would be expected to pay to fund the gap, but for which only the Scottish parliament was responsible. George Osborne has insisted that any bonds raised by the Scottish parliament as a result of its increased fiscal freedoms would need to be authorised by the Treasury—but in practice, and especially in a budgetary crisis, this would simply be a new area of conflict between Westminster and Edinburgh.

Optimistic comparisons might be made with Ireland, which managed to attract much inward investment with highly attractive business taxes. But it took that country many decades of independence before it stumbled across the correct economic policy. Alex Salmond’s successor, Nicola Sturgeon, is well to the left of her mentor; and we can already see in the Scottish parliament’s recent introduction of estate taxes—which levy much higher rates than United Kingdom stamp duty on high-value properties—where that nation would head, given autonomy on income-tax rates.

Despite the disruption to the United Kingdom as a whole which might be caused by socialism in one nation (Scotland), it is plausible that the resultant southerly exodus of high-net-worth individuals would cause such a policy to be reversed. In the meantime, however, there would remain the high probability that precisely what the No campaign argued against would come to pass: that Scotland would use the security of the Bank of England’s currency guarantees for a free ride on economic policy. How bizarre it would be for those who had won a convincing victory in the referendum should end up allowing something eerily similar to what it had convinced a majority of voters would be a disaster.

Perhaps none of this will happen: Labour might lead the next government of the United Kingdom, and they are determinedly against such a dramatic increase in the fiscal freedoms of the Edinburgh parliament. They face the possibility that such autonomy would lead to the removal of Scottish Labour MPs' right to vote on English income-tax matters, and thus the loss of the party's voting majority in Westminster on a central and most politically significant aspect of the Budget.

In such circumstances, can we expect the current dispensation to continue, in which Scots are more than 20 percent ahead of the English on per capita public-expenditure allocations and the relative decline of the Welsh economy has had no recognition in the block grant from Westminster? I am far from the only Unionist who finds it galling that the Scottish National Party claims as its own particular triumph the fact that it has not introduced student fees and has abolished NHS prescription charges, when such beneficence has been possible as a result of the extra funds Scotland has received because Conservative Unionists have protected its allocation when in government.

Lord Forsyth of Drumlean, Scottish Secretary under John Major from 1995 to 1997, is the most forensic critic of the continuation of the Barnett Formula—noting frequently how the additional spending accruing to the NHS in Scotland has not had proportionate benefits to patients—but in his evidence to a parliamentary committee on the matter in 2008, he freely admitted how he would even augment it by squeezing additional payments out of the Treasury, for example by funding pay increases for Scottish NHS workers, which otherwise could not have been met. He later remarked to me how he “was always told by my officials that I should on no account allow Barnett to be replaced by allocation according to need, because it would lose Scotland about £2.5 billion a year”.

One would expect this from Scottish civil servants. But over the past 35 years even the Treasury, which has always seen its role as preventing conspiracies by spending departments, has never made efforts to reopen the debate over the Barnett Formula. I suspect that both Treasury civil servants and their ministerial masters have found it immensely convenient to have a spending formula, however perverse, which passes each year without argument.

Opening up the whole system of block grants and deciding afresh the relative “need” of each constituent part of the UK is feared by both Labour and Conservative. For a Labour administration, it would cause sulphurous internal division between its Scottish and English MPs; for a Conservative administration, especially under the intensely image-conscious David Cameron, it would be seen as confirming the perception that “Tories don’t care about Scots”.

Yet given that within England local authorities are allocated funds according to “need” (based on such elements as the population age and levels of poverty), it would not be beyond the wit of an independent body to do the same for the nations making up the United Kingdom. I suspect one reason why Treasury ministers—even the most sceptical of Scotland’s claim for special treatment—have avoided this is that it would most likely not result in an overall cut in public expenditure but only a re-apportionment of the existing overall budget, with England and Wales receiving more and Scotland less. To the extent that such changes would be phased in gradually, one can even envisage it adding to the overall public-expenditure bill.

Change to even the most irrational arrangements within the tax-and-spend system is politically intensely difficult; and the longer the arrangements have lasted, the more difficult it is. The existing beneficiaries, however undeserving, regard the arrangement as sacrosanct and are outraged by any reform, but those unjustly treated by the status quo tend not to resent it—although the campaign of

“English votes for English laws” might be successful in stoking such resentment within the poorer parts of England.

Even if it does not, full income-tax autonomy for Scotland proposed by both coalition parties, if it comes to pass, might finally bring home to English voters just how much the status quo currently disadvantages them. Welsh voters know that already, of course, but Westminster does not feel remotely threatened by them. Scotland, on the other hand—even in the wake of the separatists’ greatest defeat—continues to exercise a form of economic veto.

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