

**Ref. 66**

## **State of the Union lecture 11 December 2000**

### **An unstable Union: Devolution and the English Question**

**By Robert Hazell**

#### **Introduction**

As you all know, this lecture was to have been given by Donald Dewar. He more than anyone else was the founding Father of the Scottish Parliament: a campaign to which he devoted his political life from the 1970s onwards. And when his dream was finally realised, he said

“I count myself lucky indeed to be playing my part in the hard work of turning a vision into reality: a working constitutional settlement not just here in Scotland but for the United Kingdom as a whole”.

It was the changes in the constitutional settlement for the UK as a whole that I had asked Donald to talk about tonight, and which it now falls to me, as a very inadequate substitute, to address in his place.

But before I address the State of the Union, I should like at the start to thank all those who have made this lecture possible. First, the Leverhulme Trust, who have generously funded the Constitution Unit to lead a five year research programme which we have entitled *The Nations and Regions: the Dynamics of Devolution*. Next the ESRC, who have kindly supported tonight's event as part of the launch of their new Research Programme into Devolution and Constitutional Change. Next our Leverhulme research partners: we have x partners spread across 12 projects in our *Nations and Regions* research programme, many of whom are here tonight. Last but not least, my own team in the Constitution Unit, who are also leading some of this research, and who have all contributed in different ways to tonight's lecture.

#### **Quarterly monitoring reports and annual review**

One of the projects which is now jointly funded by the Leverhulme Trust and the ESRC is a monitoring programme, which for the last year has published quarterly reports on the progress of devolution in Scotland, Wales and Northern Ireland. As of this year - beginning in November 2000 - we are including reports on the English regions, and on the impact of devolution on the centre, recording the consequential changes taking place in Westminster, Whitehall and the courts. These reports are instantly published on our website; but if any of you want notice each quarter when they are published, send us your email address, and we will send a quarterly reminder.

Our devolution monitoring partners have written half the chapters in the book we are launching today, *The State and the Nations: The First Year of Devolution in the UK*. They have been heroic in delivering their quarterly reports, and now their chapters for the book, to very tight deadlines: and in writing chapters of exceptional interest and quality. I commend them to you; as I do our publisher Keith Sutherland at Imprint Academic, who has produced the book in record time. He received the text in early October, and the book was ready in November. We hope over the next five years to

produce an annual review at the end of each year on the changes taking place as a result of devolution, and to launch it at an annual State of the Union lecture.

When I first invited Donald to give this lecture, I asked him to talk not just about Scotland, but to reflect more widely on the state of the Union after one year of devolution. That is the mantle that now falls to me. I am not going to attempt to cover every aspect of devolution - for that you have to buy the book, which does attempt to do so, and to provide a complete record, all in the space of 280 compact pages. Instead I am going to highlight just a few of the main themes.

### **An unstable Union**

The first is the instability of the devolution settlement. I don't want to sound alarmist, and I am certainly not joining those prophets like Tom Nairn who preach that the end of the Union is nigh. Seen from the Cabinet Office, the first year report must be that from a UK perspective devolution must be judged a success. It has not led to the break-up of Britain, which had been sternly predicted by Conservative (and some Labour) critics. The polling data in Scotland show that since devolution support for independence has declined slightly: rather than drawing us down that slippery slope,

“Devolution can only work with power sharing if there is a supply of understanding, goodwill, and self-restraint amongst parties in the province that is unprecedented ... they are being asked to make something work that on its face is unworkable.”<sup>1</sup>

A similar warning came from one of the civil servants in Northern Ireland, who wrote that ‘the Executive itself will be an involuntary coalition with internal political tensions that could degenerate into continual attrition between and within unionist and nationalist blocs’. But Robin Wilson and Rick Wilford make the interesting observation that one way in which it might be made to work is by the Office of First and Deputy First Minister accruing more and more power, to overcome the centrifugal tendencies in the rest of the Executive. Their chapter records how this is gradually starting to happen. If the trend continues the four-party coalition would become centralised into a working coalition of the UUP and SDLP, focused on the Office of First and Deputy First Minister - a ‘government-within-a-government’, which might not be very democratic, but could be one way of getting the executive to work.

### **Wales**

In Wales fundamental questions are also being asked about the institutional design. Few Members of the National Assembly believe that it has sufficient powers to make a difference. The questioning goes right through to the top. During the first year of the Assembly’s life Ron Davies, its creator, then Lord Elis-Thomas (1979-80) To. eo 5 Tc-0.000h6a



At present these views of the people of Wales go unheard in London. Rhodri Morgan knows that, and recognises that the UK government will expect the model of executive devolution to be properly tested and demonstrably found wanting before Wales comes back for more. That is why he has set such a long timescale for the independent commission. The real test for Wales will come when the Assembly has developed a set of policies and proposals which require primary legislation from Westminster. The whole scheme of executive devolution is predicated on Westminster continuing to legislate for Wales: and on Whitehall taking account of Welsh interests each year when preparing the legislative programme, and giving the Welsh legislative time at Westminster. This was identified as the crucial stumbling block in the whole scheme in speeches about the first year of the Assembly given in summer 2000 by two senior figures: the Presiding Officer Lord Elis-Thomas and Labour's Lord Prys Davies.<sup>5</sup> Only when the Assembly finds that it is not accorded sufficient legislative time, or is not allowed sufficient headroom in Westminster legislation to develop its own distinctive policies, will Wales be able to mount a strong campaign that it needs to be given legislative powers.

I had thought that the spark for such a campaign might emerge from Rhodri Morgan's review group, currently due to report by about September 2001; or from the independent commission promised by the new coalition government, which is not due to report until 2004. But the patience of others may not last that long. Last week Ron Davies fired the starting gun in the campaign, by publishing a challenge to his fellow Assembly members - and to London. In his paper he said:

"Westminster knows that the Assembly cannot deliver its full potential within the structure currently operated and that if it fails to be more expansive and responsive to the needs of the Assembly, the calls for full powers over primary legislation will be irresistible."<sup>6</sup>

This from the godfather of executive devolution; but also the man who famously said that devolution is a process, and not an event. It is clear that Ron wants executive devolution to be as short-lived an event as possible; and for the process to start now. He is not alone. Everyone I know inside the system recognises that the model of executive devolution isn't working. It is very striking how at the end of the first year, legislative devolution in Wales is no longer regarded as a matter of if, but when. A majority of Assembly members, and a majority of the supporters of all parties in Wales bar the Conservatives,<sup>7</sup> are already convinced that the Assembly needs legislative powers if it is to function satisfactorily: what remains to be resolved is the timing of their campaign, and the need to convince their colleagues at Westminster.

## Scotland

---

<sup>5</sup> Lord Elis-Thomas, *National Assembly: A Year in Power?*, Institute of Welsh Politics, Aberystwyth, 8 July 2000; Lord Prys Davies, *The National Assembly: A year of laying the Foundations*, lecture to the Law Society at Llanelli National Eisteddfod, 9 August 2000. Both are cited extensively in the Institute of Welsh Affairs quarterly monitoring report, *Devolution Looks Ahead: May to August 2000*, published on the Constitution Unit website [www.ucl.ac.uk/constitution-unit/](http://www.ucl.ac.uk/constitution-unit/).

<sup>6</sup> Ron Davies, *In Search of Attitude*, reported in the *Western Mail* 4 December 2000.

<sup>7</sup> NOP *Wales Monitor* 4, June-July 2000, Table 13 gives breakdown by party affiliation.

The model Wales will appeal to is Scotland. The Scottish Parliament has substantial legislative powers; and the first year legislative programme in Edinburgh shows the Parliament beginning to exercise them to the full. But even in Scotland calls have been made for extra powers. The Scottish opinion polls summarised by John Curtice in the chapter of our book on public attitudes show most Scots disappointed in the performance of their Parliament; and some of them concluding that it needs extra powers to make a real difference to their lives. Similar findings are reported in the State of the Nation poll conducted by ICM in October 2000, when 72% of Scots said they wanted more power to be given to the Scottish Parliament. This sentiment was reflected in some of the end-of-year writing on the performance of the Scottish Parliament in its first year. Thus Professor Lindsay Paterson, writing in *The Scotsman* in August under the headline ‘The majority see the only route to further progress in a stronger Parliament than we have’, concluded his article

“The utopian dreams which always underlaid the whole project for home rule are now turning not into disillusionment but to the demand for a parliament with substantial extra powers.”<sup>8</sup>

It remains to be seen whether, in the second year of devolution, the demand for extra powers picks up any groundswell of support in the Scottish Parliament; and whether it starts to be linked (as it clearly is in Wales) to specific issues where the devolution settlement does not deliver sufficient power. If it is simply an expression of general frustration, then the grant of extra powers may not be the answer; the difficulties may lie more in the internal workings of the Executive or the Parliament than in the extent of their formal powers.

### **The English Question**

England remains the gaping hole in the devolution settlement. It is the space where everything is still to play for. Prof Alan Harding, in his excellent report on the options for regional government in England speaks of the chaos in the middle of English governance, and concludes that the current organisational landscape is unbalanced and unlikely to prove stable.<sup>9</sup> Prof John Mawson, leading our project on business attitudes to the RDAs, has said “present arrangements in England are inherently unstable and will lead to pressures for further change”.<sup>10</sup> Lord Dearing, who conducted the Regional Hearings for the Local Government Association, summed it up by stating that ‘further change in the regional arrangements in England is inevitable’. And John Tomaney (the leader of our monitoring team in England) in his chapter for our book explains the reasons why. The second half of my lecture draws on his and other chapters to explore the English Question.

There are many strands to the English Question. One being explored by a number of researchers is the impact devolution has on national identity. Jack Straw has discerned an increase in Englishness, and this is confirmed in the latest British Social

---

<sup>8</sup> *The Scotsman*, 14 August 2000 p 12.

<sup>9</sup> Prof Alan Harding, *Is there a ‘missing middle’ in English Governance?*, New Local Government Network 2000.

<sup>10</sup> John Mawson, ‘Whitehall, Devolution and the English Regions’, background paper for West Midlands Regional Chamber annual conference, Aston Business School, 7 July 2000.

Attitudes survey, based on interviews conducted in summer 1999. The proportion of people who said they were English, not British, had increased from 7% to 17% over the two years since 1997, when devolution was first proposed. But the survey reveals no evidence of resentment in England about power passing to the Scottish Parliament and the Welsh Assembly. On that the English seemed relaxed, to the point of indifference. A quarter of people living in England even thought Scotland should become independent; while more than half would be 'neither pleased nor sorry' at Scottish independence. A fifth wanted independence for Wales; while half (54%) thought Northern Ireland's long term interests would be with the rest of Ireland rather than with Britain.

But these reformist - even revolutionary - views about the rest of the country don't seem to lead to any great appetite for reform within England. Back at home, only 15% of the English favoured regional assemblies for themselves, and only 18% said they wanted an English Parliament. The researchers conclude: "This is probably why the somewhat muted attempts by the Conservative Party to identify itself as the party of English interests have met with an even more muted response".<sup>11</sup>

National identity is but one strand; and not my field of expertise. I want if I may to address the constitutional aspects of the English Question. In constitutional terms the English Question is best approached as a series of questions about English representation in our new quasi-federal system:

- should there be an English Parliament to match the Scottish Parliament and the Welsh and Northern Ireland Assemblies?
- should England instead be divided into eight or so regions, each with its own assembly, which in population terms would come much closer to the size of the devolved assemblies?
- or should Westminster be adapted to give greater voice to English concerns, without going as far as creating a separate English Parliament?

### **An English Parliament?**

The last two options are not mutually exclusive. As I shall explain, I think we are going to see a bit of both. But the first option of a separate English Parliament does not seem to me to be realistic. Those who demand one are in effect demanding a full-blown federation, in which the four historic nations would form the component parts. But there is no successful federation in the world where one of the parts is greater than around one-third of the whole. England with four-fifths of the population would be hugely dominant: even more dominant than Prussia in the old Germany. It would be grotesquely over-balanced, with the English Parliament as important as the Westminster Parliament. Nor would it meet the demands for representation coming from the English regions: to them, an English Parliament looks like another form of London dominance. Nor is there any strong public demand: the Campaign for an English Parliament have attracted no great public following during their weekly vigils waving their St George's flags in Parliament Square.

The Campaign is a political gesture, making a political point as much as it is pressing for the establishment of a new political institution. The point is that with devolution

the Scots, the Welsh and the Northern Irish will have a louder political voice, and the English risk losing out. But the answer for the English may lie in adapting Westminster and Whitehall, in some of the ways I will discuss in a moment, and not in a separate English Parliament.

### **Regional assemblies**

The second solution to the English Question might be the creation of a new tier of regional government in England. Regional assemblies are one of Labour's two unfulfilled pledges from their 1997 manifesto, which promised legislation to allow the people of England, region by region, to decide in a referendum whether they want directly elected regional government. John Prescott has been the main standard bearer for this pledge inside government, but he has attracted little support from his Cabinet colleagues, and even less from No 10: so that three years on, the most he has been able to achieve is Regional Development Agencies. But the pledge won't lie down and die: at Labour party conference this year in Brighton the party approved the following policy statement:

“Labour intends, as soon as practicable, to move to directly elected regional government where and when there is a clear demand for it. The way forward will include proposals to:

- request that the existing regional assemblies and chambers, working closely with the regional partners, develop detailed proposals for elected assemblies in their respective regions;
- and/or publish a government Green or White Paper on regional governance.”

Let me mention briefly here that the Constitution Unit is developing detailed models for elected regional assemblies, in a project led by Paul McQuail and Mark Sandford



The requirement of a predominantly unitary system of local government is a potentially insuperable barrier for regional government. After the last round of local government reorganisation there is absolutely no appetite for more. If the government really wishes to see unitary local government it will have to impose it, as the Conservatives did in Scotland and Wales. Another possible threat to regional government lies in the form of directly elected Mayors. They are not necessarily incompatible, but there is an interesting tension between the two models. For at regional level there may not be room for two political leaders claiming to be the voice of the region, one as leader of the Regional Assembly and the other as the Mayor of the largest city.<sup>12</sup> Which model wins through may depend upon who occupies the political space first.

At present it has to be said that elected mayors look likely to get there first. The enabling provisions are now on the statute book in the Local Government Act 2000, the Government wants to see more, and other cities could opt for elected mayors from May of next year onwards. Regional Assemblies are a long way further back. Elected mayors as the leaders of the biggest local authority in the region may prove to be one more voice that discovers little interest in moving on to a Regional Assembly, once they realize that it would be a countervailing source of power over which they would have less control. Elected mayors may prefer, with encouragement from government, to become the leaders of networks of regional and sub-regional governance in which they would be amongst the biggest players.

### **Westminster as a proxy for an English Parliament**

My third solution to the English Question brings us back here, to Westminster. We have a central chapter in the book on how Westminster is gradually coming to terms with the impact of devolution. The changes so far have been minimalist and piecemeal, with no leadership and no clear sense of Parliament's new role. But in a series of tentative and fumbling steps Westminster is gradually developing its role as a quasi-federal Parliament. This includes operating as a proxy for an English Parliament, within the wider shell of the Union Parliament.

Pre-devolution we had a three-in-one parliament, and it was clear when Westminster was operating as the legislature for Scotland, Wales and Northern Ireland. Post-devolution we are developing a four-in-one parliament, and it will need to become clearer when Westminster is operating in English mode. This is our first attempt to produce a territorial map and start to expose the extent of English business at Westminster, and over the next few years we will try to record more comprehensively how Westminster operates as an English parliament. English business is transacted through the work of the Select Committees; through the new Standing Committee on Regional Affairs (which will be open only to English MPs); through Questions to Ministers on English matters; through Westminster Hall, which provides a further forum for English debates; and through English legislation.

I want to take you through these functions in turn, because so far as I know this is the first time anyone has looked at Westminster through a territorial lens. And I want to adjust the focus as we go through the list, so that sometimes we are looking through a

---

<sup>12</sup> Although in countries such as France and Spain they have high profile Mayors co-existing with a regional tier of government.





territorial committees reflect the party balance in the House as a whole, or in the territory concerned? The Liberal Democrat proposal was supported by the Conservatives but defeated by the government.

Listening to the criticisms levelled during the debate, Margaret Beckett indicated that the committee could expand its role if pressure for English forums at Westminster grows. Perhaps I could mention here that we are conducting a survey of MPs, asking what has changed as a result of devolution. One of the early findings is that they think there should be fewer forums to discuss Scottish and Welsh issues, and more forums to discuss English issues, and the English regions. But at this stage it has been a struggle for Margaret Beckett to bring the new committee into being at all. It is now eight months since she introduced the changes to Standing Orders. A month ago I asked her when the committee would be established, and she said before the end of the session - the one that has just ended. Perhaps if she had been a bit bolder about the role and powers of the committee she might have found the opposition more cooperative, and more English members willing to serve.

### **An alternative Forum: Westminster Hall**

Another possible forum for English debates is the new experimental chamber in the Grand Committee Room off Westminster Hall: an experiment which the House has recently decided to continue. In its first year this forum has debated some regional matters, and I had thought that Westminster Hall might become another *de facto* English part of the Westminster system; but the first year figures suggest not. Of the 337 debates held in Westminster Hall in 1999-2000, only a quarter were on English matters, and many of these were driven more by members' individual constituency interests than anything else.

### **'English votes on English laws'**

So far I have talked only of the scrutiny function, and described three different fora - Select Committees, the new Standing Committee on Regional Affairs, and Westminster Hall - as offering machinery through which Westminster can start to operate as an English Parliament. The government has conceded the need for a specifically English forum, although its opening offer is about as small as you can get. But scrutiny is one function; legislation is another, and one played for much higher political stakes. Here the government is reluctant to concede anything which might limit the voting rights of non-English MPs over English laws: the famous West Lothian Question. Tam Dalyell, the originator of the question, exercises a self-denying ordinance by not voting on English and Welsh legislation; and William Hague has said that he would change Standing Orders to prevent Scottish MPs like Tam voting on English or English and Welsh laws.

The West Lothian Question - or the English Question, as I prefer to call it - goes back a very long way. Gladstone wrestled with it during the debates on Irish Home Rule,

with all-party support, in the report last year from the Procedure Committee: a committee with nine Labour, three Conservative and two Liberal Democrat members.

### **The Procedure Committee and the Norton Commission**

I don't want to delve too deeply into the legislative process, so I have tried to summarise it in Figure 3. The first row shows the normal process, with the four stages a bill passes through in the House of Commons. The second row shows the special procedure that used to be followed for Scottish bills before devolution. In their May 1999 report on *The Procedural Consequences of Devolution*, the Committee proposed a new procedure for territorial legislation, based on the special provision for Scottish bills. This would have enabled the Speaker to identify, for the first time, Bills relating exclusively to England, or England and Wales. The committee then went on to propose a new process for any Bills so identified. Under these arrangements, shown in the third row in Figure 3, such Bills could start their Commons passage by being referred to a Second Reading Committee, made up entirely of members of the territory concerned. The remaining three stages would

Just to illustrate again that this is not just a Conservative issue, the only legislative

(2) This Act extends only to England”.

I got very excited when we found this, but it turned out to be a Private Member’s Bill which didn’t get passed, inspired by devolution. Wales now has a Children’s Rights Commissioner, and the sponsor of this bill wanted England to follow suit. But I do believe it is a harbinger of things to come. English laws will come, not through popular demand, but simply as a by-product of devolution: as the residuum which Westminster is left with once much of Westminster’s law making is devolved to Scotland, Wales and Northern Ireland. At the moment the residuum are the laws for England and Wales, because both Scotland and Northern Ireland have law making power. If you accept my earlier conclusion in relation to Wales, that legislative

West Lothian territory: as it was in 1950, 1964 and 1974, when their overall majority was 2, 1 and 1 respectively. If we assume that Labour's share of the vote shrank by 7 per cent and the Conservative share rose by 7 per cent, and everything else remained the same, then Labour might not have a majority in England and Wales: but their overall majority would then shrink to half a dozen seats or less. And if we assume a 6 per cent swing from Labour to Conservative, then Labour might not have a majority in England; but their overall majority would be little more than a dozen. I haven't been able to get odds from the bookies on a majority of this size, but they must be pretty long. So in terms of parliamentary majorities Labour may not have to confront the West Lothian Question just yet. And from 2005 onwards, there will be a dozen fewer Scottish MPs, making the probability smaller still.

### **Changing the composition rule for territorial committees**

We don't have the details of how Hague would implement English votes on English laws, but I am told that he would build on the Norton Commission proposals: and possibly prohibit non-English MPs from voting at Third Reading as well. We can call that a full strength English procedure. To work it would require two fundamental changes in our parliamentary system. The first, which was part of the Procedure Committee as well as the Norton proposals, would be a change to the composition



But it would be extraordinary: it would require a completely different attitude by government towards the passage of government legislation. Perhaps that will come, as UK governments become more relaxed about the devolved parliaments passing legislation which they dislike: but it is one thing to have Edinburgh cock a snook at you - it is another for the snook to be cocked right under your nose, and by a parliament representing 85% of the UK's population.

### **A Parliament within a Parliament**

I said 'a parliament' not wholly by accident. For the last thing I want to suggest about William Hague's proposal is that it is not quite as deceptively simple as Douglas Hurd implies. Implemented to the full, by what I have dubbed a 'full strength' English procedure, it amounts to devolution for England: because what Hague is effectively proposing is an English Parliament within the Westminster Parliament. That is a huge change, which deserves as much discussion and proper deliberation as the proposals on devolution for Scotland. But Hague, if we are to believe his Oxford speech, would make the change 'in the opening days of the next Conservative Government'.

I think Hague is right to be raising the issue of English votes on English laws: but wrong to be proposing such a major change so swiftly after the next election. As I have explained, Westminster is beginning to develop the capacity to debate English matters; but that process needs to develop organically and gradually, and should not be rushed. I foresee a gradual process of evolution at Westminster, in which some of the Select Committees in future years become more distinctively English; while other English fora may develop, like the new Standing Committee on Regional Affairs. And I foresee a gradual process on the legislative side as well, starting with a quarter strength or half strength English procedure, and seeing how that works, before building up to the full strength process proposed by Hague. Let us not forget that in Scotland the Scottish Constitutional Convention had eight years to develop their proposals for the Scottish Parliament. Then those proposals were put to referendum. In England there needs to be an equally wide process of deliberation and consultation: the English deserve no less.

### **Finding answers to the English Question**

I know there are other dimensions to the English Question which I have not even touched upon: issues of national identity, public attitudes, culture and history, to say

the kind of policy-oriented research which runs through the whole of our research programme into the dynamics of devolution which the Leverhulme Trust have so generously funded.

Donald Dewar said he counted himself lucky indeed to be playing his part in turning vision into reality and building a workable constitutional settlement. We who observe and report on these developments should count ourselves equally lucky. We have an extraordinary opportunity in these two research programmes, funded by Leverhulme and the ESRC, to inform and to guide the development of policy as the devolution settlement unfolds. It is not just an opportunity; as Donald might have said, it is a duty. We will never in our lifetimes see again constitutional changes of the kind which are now unfolding before our eyes. The Union and its component nations are being reshaped in ways which none of us can fully understand or foretell. But we academics should be able to understand better than most; and without pretending to perfect wisdom or perfect knowledge, we should do our best not just to analyse and record, but to map out and to chart the way ahead.

