

The West Lothian Question

Research Paper 95/95

6 September 1995



This Paper updates and replaces Research Paper 95/58. Since that edition was published in May this year, the issues encompassed within the phrase 'West Lothian Question', both expressly and by implication, have continued to be significant aspects of the debate over Scottish devolution or independence; the continuation of the Union, and the representation of the various territories of the UK in the Westminster Parliament.

Members wishing more general briefing on devolution, especially Scottish devolution, and related territorial issues should consult earlier Library Papers, most recently Background Paper 291 (16.6.92) *The government of Scotland*.

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Summary

The West Lothian Question has been regarded by many since the 1970s as a crucial consideration in any proposed devolution in the UK, and has been at the forefront of the current debate between the Government and Opposition parties. In its present form the Question has apparently boiled down to the issue of whether and why 'Scottish' MPs should be entitled to sit and vote at Westminster on 'English' matters, while 'English' MPs would not be able to participate on equivalent matters transferred to a 'Scottish' Parliament. However the Question also encompasses related issues central to any proposed scheme of devolution, such as the much-discussed level of representation of devolved areas at Westminster, and the practical and legal relationships between the one or more devolved Parliaments or assemblies and Westminster. The views of the 'author' of the Question, Tam Dalyell (Member for West Lothian in the 1970s) are set out in some detail here.

The West Lothian Question's importance rests, in part, on the perception that it is actually or virtually 'insoluble'. Opponents of devolution use it as a political trump card against any devolution scheme, and pro-devolutionists often feel obliged to find a satisfactory 'answer' to it, such as a form of English regional devolution. However some, such as Ferdinand Mount, have argued that the Question is neither insoluble nor a real problem, as it simply reflects the asymmetry common to British constitutional arrangements. Some possible 'answers', within a Westminster context, are briefly explored.

UK experience of living with domestic forms of 'devolved' government is limited to Ireland. The Irish situation is examined here, from the 'Home Rule' period from the 1880s until early this century; through the Stormont era from the 1920s to the 1970s, and direct rule thereafter.

The issue of representation at Westminster of the various parts of the United Kingdom is also examined, including the issue of 'over-representation' of some parts. While removal of representation from a devolved area would 'solve' the West Lothian Question, a reduction in representation cannot, in principle, do so, although it may alleviate any perceived representational unfairness between parts of the UK.

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I Introduction

The 'West Lothian Question' is examined in the context of the recent intensification of the devolution/independence debate, especially in relation to Scotland. The issue is explored in broad terms; no attempt is made here to provide a comprehensive account of past legislative efforts, legal issues or political arguments on all the various aspects of this topic, or devolution in general.

This paper uses the term 'West Lothian Question'¹ throughout as it is a convenient and well-known shorthand term for the range of issues it encompasses (it is so called after Tam Dalyell, then Member for West Lothian, who persistently put forward such arguments during proceedings on 1970s devolution legislation). Much of the content of the Paper uses, for illustrative purposes - and reflecting the terminology of the argument in the 1970s and at present - *Scotland* to symbolise a devolved area, and *England* to symbolise the non-devolved territory of the UK.

When the Prime Minister attacked Labour's devolution plans last December, thereby re-igniting the whole debate, he addressed the issue mainly in 'West Lothian' terms:

"Their central promise is for a new Scottish Parliament Think about what powers this new Scottish Parliament might have. It is dangerous ground. We are told it would control education and health, for example. But what would that mean? If those powers were handed to a Scottish Parliament - so that only those members of a Scottish Parliament could decide on education in Scotland and on health in Scotland - then it surely would not be possible for Scottish MPs to come to Westminster and vote on policies affecting health and education in England, Wales and Northern Ireland. To do so would destroy the natural justice that balances our Parliamentary constitution. And on what Scottish matters, if any, would English MPs still be allowed to vote? And what would be the position if some future Labour Government had a majority of 10 seats at Westminster, but a majority of 30 seats in Scotland on which their national majority rested? And then suppose those 30 MPs could not vote on some issues at Westminster. What constitutional chaos would flow from that? None of these issues has been examined in detail or explained to the British people ... Then there's the level of representation of Scottish MPs at Westminster, guaranteed since the Act of Union. That couldn't continue. Have Labour discussed how many seats would have to go?"²

¹ The first use of the term is not clear from the sources. Enoch Powell used it in debate on the Scotland Bill on 14 November 1977 [HC Deb vol 939 c91]. The author would be happy to receive information on earlier Parliamentary or other sightings.

² Conservative Party PN 823/94, 2 December 1994. A recent comprehensive statement of the Conservative approach to all aspects of the Union - including the West Lothian Question, English regionalism and Northern Ireland - is contained in the Conservative Research Department document *The United Kingdom: maintaining the union of its peoples (Politics today, no.4, 28.3.95)*.

II The West Lothian Question

Perhaps the most appropriate explanation of the West Lothian Question is that of its 'author', Tam Dalyell. He set out his argument in some detail in his 1977 book *Devolution: the end of Britain?*³, which can only briefly be summarised here. He asserted that "if the United Kingdom is to remain in being, then there can be no question but that the Scottish constituencies must continue to be represented at Westminster Yet once the Assembly had come into being, and was legislating for those areas that had not been reserved to the United Kingdom Government, the position of the seventy-one Scottish Westminster MPs would become awkward and invidious. Their credibility - like those of their counterparts in the Assembly - would be deeply suspect, simply because there would be so many areas of concern to their electors on which they could not pronounce." He examined four possible answers to the Question "and not one of them can be reconciled with Britain's continued existence as a unitary state ..." :

(i) *No Scottish or Welsh representation at Westminster*: "However if there is to be a United Kingdom Parliament, this argument is obviously impracticable."

(ii) *Maintenance of the status quo in terms of levels of representation*: "But would this really be acceptable - and for how long? ... Scotland is significantly over-represented per head of the population at present .. if there were Scottish and Welsh Assemblies, this would become even less defensible than it is at present. The fact that retaining the status quo in relation to the number of Scottish MPs at Westminster is official Government policy does not make it any more acceptable. We would have the absurd situation in which Scottish and Welsh MPs could continue to legislate on subjects which had been devolved to the Assemblies in their own countries. They would not be responsible to their own constituents for such legislation, nor would they be answerable to the English voters who would be affected by it."

(iii) *Reduction of Scottish and Welsh representation at Westminster*: "But reduced representation still does not solve the problem of irresponsible participation in other people's affairs. It is no more acceptable that 57, 50, 35 or 10 MPs should vote on matters for which they have literally no responsibility than that the existing 71 should do so."

(iv) *Scottish and Welsh MPs to speak and vote only on those matters not transferred to Scottish and Welsh Assemblies ('in and out Members')*: "This too is indefensible. Apart from the fact that they would inevitably be thought of as second-class MPs, the fundamental difficulty - which bedevils the whole devolution issue - is that it is virtually impossible in a unitary state to distinguish one set of topics from another ... Given all the goodwill in the

³ See esp pp245-251, and, on an alleged parallel with Northern Ireland, see chap 13. Note that the argument refers to the situation in 1977 in its terminology and factual detail (eg number of Scottish MPs).

world - which does not, and is never likely to exist - one cannot have Members of the same parliament with different functions and different limitations ... Rules would have to be drawn up whereby one could decide on which issues the Scots and the Welsh could and could not vote: yet .. it would be almost impossible for the Chair to pronounce satisfactorily on this ... The Speaker would be put in a highly invidious position - and he would inevitably be drawn into the hurly-burly of party politics."⁴

The legislative and political problems of the Question were aired at length during the protracted proceedings on the devolution bills in the late 1970s, not least by Mr Dalyell himself⁵, as well as by Enoch Powell (who, with other Unionists, emphasised the Northern Ireland perspective), by anti-devolutionists and by the Conservative Opposition. Mrs Thatcher explored the implications of alleged over-representation during the Second Reading of the *Scotland and Wales Bill* on 13 December 1976⁶, and Francis Pym, responding to a statement by the Leader of the House, Michael Foot, on the Government's proposals for new devolution bills in the 1977-78 session, described the West Lothian Question representation issue as "the single most contentious problem to arise in our debates on the [Scotland and Wales] Bill .."⁷ The Government generally sought to deflect efforts at forcing them to make a detailed response to the Question posed by Mr Dalyell and others. Its view was set out in the September 1974 White Paper *Democracy and devolution: proposals for Scotland and Wales*:

"The setting up of Scottish and Welsh Assemblies does not, however, detract in any way from the overriding interest of all the people of the United Kingdom in the determination of United Kingdom policies as a whole. The United Kingdom Parliament and the central Government Ministers will of course remain fully responsible for the overall interests of the United Kingdom and it is essential that the determination of United Kingdom policies should fully reflect the needs and contributions of all its constituent parts. For this reason the Government regard it as essential that both Scotland and Wales should retain their existing number of Members of Parliament in the United Kingdom Parliament and that there should continue to be Secretaries of State for Scotland and Wales who act as full Members of the United Kingdom Government in forming United Kingdom policies."⁸

The November 1975 White Paper, *Our changing democracy*, simply stated that "The United

⁴ When Gladstone's Foreign Secretary, Lord Rosebery, proposed a form of 'in and out' arrangement for Irish MPs after Home Rule, at the Speaker's discretion, the Prime Minister replied that "I am afraid that the Speakership would hardly bear the weight of your proposal." [H C G Matthew, *The Gladstone diaries*, vol XI p542 (28.4.86)].

⁵ Consider the following exchange during the committee stage of the *first* devolution bill:

Mr Dalyell: The point cannot be made too often ---

Minister of State, Privy Council Office (Mr John Smith): Yes, it can.

Mr Dalyell: No, it cannot. [HC Deb vol 925 c262, 1.2.77].

⁶ HC Deb vol 922 cc1004-5, 13.12.76

⁷ HC Deb vol 936 c316, 26.7.77.

⁸ Cmnd 5732, paras 32-33 (extracts). See also the full debate on a proposed new clause to the *Scotland and Wales Bill* moved by the Opposition seeking a Speaker's Conference on "the appropriate number of Members of that House representing Scottish and Welsh constituencies after the enactment of this Act" [HC Deb vol 925 cc375-512, 1.2.77; defeated 199-277].

Kingdom will still be a single state ... Parliament will remain ultimately sovereign on all matters, whether devolved or not, and will continue to include the present complement of Scottish and Welsh Members."⁹

The (Kilbrandon) Royal Commission on the Constitution, which reported in 1973, considered the effect of devolution on the Westminster Parliament¹⁰, and noted that "if devolution were to be to selected regions only, a problem would arise over the extent and level of representation of those regions in the House of Commons compared with that of regions which did not have legislative assemblies of their own."¹¹ The Report then examined the Northern Ireland situation as an example of the difficulty of dealing with this problem, including an 'in and out' arrangement¹², and concluded that "In our view, therefore, all Members of Parliament, whether or not they come from regions with their own legislative assemblies, must have the same rights of participation in the business of the House of Commons"¹³, although it did go on to consider the arguments for reductions in the level of representation of countries/regions with their own devolved assemblies.

The current debate over the West Lothian Question appears to be argued in terms of 'Scottish' MPs continuing to be able to speak and vote on 'English' matters at Westminster whereas 'English' MPs cannot speak and vote on devolved matters. This may reflect the fact that anti-devolutionists regard the Question more as an argument which itself undermines the whole devolution policy rather than a difficulty to be resolved. See, for example the recent speech of the Chancellor of the Exchequer in Edinburgh. Mr Clarke said that "the West Lothian Question is not some abstract constitutional issue" and claimed that the 'differential representation' the Question assumed "would incense the voters of middle England." He contrasted the independence policy of the SNP ("logical and bad for the Union") with the devolution policy of Labour ("illogical and bad for the Union"), and concluded by saying that "the conflict and confusion that would arise between [Mr. Blair's] proposed devolved Edinburgh Assembly and Westminster would be .. fatal to the good governance of this country and its people."¹⁴

Supporters of devolution in their turn generally feel obliged to 'answer' the Question to prevent this undermining of their policy, by proposals for regional devolution in England or by seeking to turn the Question around, as the Scottish Labour Party did recently by posing the 'Westminster Question': "It is ironic that those who are preoccupied with this so called West Lothian question appear unconcerned by the converse Westminster question. Why is it that 560 non-Scottish MPs decide legislation which will be implemented only in Scotland? This is surely a much greater anomaly and democratic affront than the position of Scottish

⁹ Cmnd 6348, para 296.

¹⁰ Cmnd 5460, paras 810-815.

¹¹ para 811.

¹² See the discussion in para 813.

¹³ Para 814. See also Part X on Northern Ireland generally (esp paras 1337-8).

¹⁴ Scottish Conservative Central Office press notice, 24.3.95, transcript.

MPs at Westminster."¹⁵

III An insoluble problem?

Perhaps the main reason for the continuing prominence of the West Lothian Question in the debate on the territorial government of the UK is the perception that it is insoluble; that it is an unanswerable question. However some have argued that this is not necessarily true. Ferdinand Mount has put forward an argument that it is the belief that there has to be symmetry in any arrangements for territorial government which makes arguments such as the West Lothian Question difficult for reformers to answer. He claims that the UK has had, and continues to have, many examples of asymmetry, the Northern Ireland Parliament being the most obvious - and topical - recent instance, and that any political system will have 'anomalies' - such as the Scottish and Welsh 'over-representation' at Westminster - which may have to be accepted:

"Actual loyalties exhibit no God-given symmetry, and legislators should not attempt to invent any. There is no logical compulsion either to set up matching regional assemblies all over England; they are not wanted and would serve no useful function. As for the 'West Lothian Question', it is answered by existing practice. MPs are constantly voting on Bills which do not apply to them or their constituents. Membership of any political community entails acceptance of its anomalies; some of these anomalies may be the result of oversight or ill-considered legislation or administration in the past, and so removable, and part of the never-ending quest for improvement which is inherent in political activity is to remove such anomalies. But other anomalies follow from the uneven, asymmetrical nature of all existing societies and so must be endured; the maturity of any political culture is to be measured very largely by the extent to which this is understood. That is not to say that sophisticated political cultures are complacent or blind to injustice; on the contrary they will tend to be alert in the detection of injustice and active in its removal. But to understand that political arrangements at any given moment can never be perfectly harmonious and symmetrical in every respect is the condition of a durable polity."¹⁶

Mount's argument is of interest not only in relation to the West Lothian Question but also for its application to the UK constitutional system as a whole. Indeed any considered analysis of the West Lothian Question, with a view to 'answering' it, tends to shed some light on the territorial nature of much of the UK's constitutional and Parliamentary arrangements. Many proponents of devolution in the post-1970s era have adopted some form of the Mount approach that the West Lothian Question is not an insoluble problem because one has only to accept existing practice or some variation of it. For example Ioan Bowen Rees, writing in a recent collection of papers on Welsh devolution, *A Parliament for Wales*,¹⁷ quoted Mount's analysis with approval, and states that, in the related question of Welsh representation at Westminster, "it is certainly not for the proponents of a Parliament for Wales to propose a diminution in the number of Welsh MPs at Westminster. After all, it is there that - subject

¹⁵ *A Parliament for Scotland: Labour's plan*, March 1995, p6.

¹⁶ F Mount, *The British constitution now*, 1993 ed, pp254-5

¹⁷ John Osmond (ed.), 1994, pp55-56. See also the interesting text of the Wales Labour Party's devolution proposals, *Shaping the vision*, May 1995

to the development of the European Union - the most momentous questions of war and peace, finance and the economy will still be decided for the whole Kingdom." The Scottish Labour Party's recent devolution proposals claimed that "the anomaly which would arise from the creation of a Scottish Parliament, is no greater than many which currently exist. The truth is that the British constitution is an imperfect creature."¹⁸

In principle, independence for Scotland and Wales or a UK-wide system of federalism or devolution would render the West Lothian Question redundant. Some critics of devolution have, for example, argued that the Labour party's proposals for some system of English regional devolution are intended to deal with the West Lothian Question as much as they are proposals for genuine constitutional reform. Gordon Brown has acknowledged the linkage of English regionalism and the West Lothian Question in his speech on 12 January 1995: "And it is because a Scottish Parliament and an Assembly for Wales go hand in hand with the offer of greater regional democracy throughout Britain that what has been called the West Lothian Question should not, in my view, be a barrier to proceeding with change."¹⁹ However in an interview in *The Scotsman* on 8 March, Tony Blair said that "I do not see Scottish devolution in any way shape or form dependent upon what happens in the English regions." When asked about the West Lothian Question aspect of English regionalism, he said "That is not really a basis for legislating for the the English regions. You are not going to answer one question by going for another. The answer to the West Lothian question is what is happening in Northern Ireland ... the Government will not reduce the number of MPs there. Scots MPs will still be coming to Westminster to decide the main parts of economics, foreign affairs and defence policy and all the rest of it ..." He also said that Labour had not accepted the possibility of a reduction in the level of Scottish representation at Westminster.²⁰

The October 1994 report to the Scottish Constitutional Convention by the Scottish Constitutional Commission - a body appointed by, but independent of the Convention - considered 'West Lothian Question' issues.²¹ Although the report did not use the term, it did recognise that the creation of a Scottish Parliament, without devolution in the rest of the UK, "inevitably creates an anomaly ..." ²² The Commission rejected an 'in-and-out' solution as "clearly unrealistic", but thought that a reduction in the number of Scottish MPs at Westminster could be seen as a more realistic way of "reducing any sense of injustice or imbalance created by the 'asymmetrical' establishment of a devolved Parliament in one part of the United Kingdom."²³ However they rejected it also because (i) they regarded Scottish devolution as

¹⁸ *A Parliament for Scotland: Labour's plans*, March 1995, p6.

¹⁹ Transcript, p12.

²⁰ "Blair on devolution", *Scotsman*, 8.3.95. See also, for example, the *Regional government consultation paper* published in August by the North of England Assembly of Local Authorities, prompted in part by the Labour Party's 1995 consultation paper on English regional government, *A choice for England*.

²¹ *Further steps towards a scheme for Scotland's Parliament*, pp24-7.

²² p24.

²³ These 'solutions' are considered in more detail later in this Research Paper.

the first step in a dynamic process of UK constitutional change, which argued against immediate representational changes, (ii) the powers remaining at Westminster affecting Scotland as part of the UK were so important that the case for reduced Scottish influence in these policy areas would have to be made in its own right, and (iii) a reduction in representation "would not, in any case resolve the anomaly which it sets out to address." The Commission therefore recommended against an immediate reduction of Scottish representation at Westminster, but recommended that the Convention "should promote the opening of a general debate on patterns of Westminster representation during a period of decentralisation, which might lead to agreed legislation on the issue at a later date."²⁴

One recent attempt to deal with the Question was contained in Spencer Batiste's proposed ten minute rule bill on redistribution of House of Commons seats (he was refused leave by 162-53), in which, for any part of the UK which has a devolved assembly, "if the powers of such a devolved Parliament were to cover the whole range of domestic affairs, its electoral quota would be doubled, and pro rata for any lesser devolution of powers. Its duly elected Westminster Members of Parliament would then be fewer in number, but they would be free to vote on all issues and to hold all offices."²⁵

Later sections of this Paper will explore the 'in and out' solution as proposed in Irish Home Rule legislation, and the Kilbrandon Commission's consideration of the proposal. A variant of this proposal re-emerged during proceedings on the Scotland Bill in the late 1970s, ultimately as s66 of the *Scotland Act 1978*²⁶. It applied to "any Bill which does not relate to or concern Scotland or any part of Scotland but would, if it had related to or concerned Scotland, have been within the legislative competence of the Assembly,"²⁷ which had been passed by the House of Commons, but which required the votes of 'Scottish' MPs for its majority on second reading. Such a Bill would not be deemed to have been read a second time "unless after the next fourteen days on which that House has sat after the division took place that House confirms its decision that the Bill be read the second time."²⁸ S66(2) provided that this procedure would not have come into operation unless approved by a resolution of the House, thus giving the House control over its own proceedings.

This solution would have not meant any reduction in the level of Scottish representation, nor in the status of 'Scottish' MPs. However normal party whipping could well mean that any second vote would be expected to produce the same result as the first. Therefore the provision appears to have been intended to allow the House to reconsider its decision rather

²⁴ p26.

²⁵ HC Deb vol 255 cc 853-7, 28.2.95.

²⁶ For a full discussion of this provision, including its convoluted legislative history, see AW Bradley & DJ Christie, *The Scotland Act 1978*, notes to s66. See also Tam Dalyell's critical analysis of an 'in and out' solution, noted above.

²⁷ S66(3).

²⁸ S66(1).

than directly affect or adjust the arithmetic of a vote. Because of the complicated legislative history of the provision, s66 contained some textual difficulties²⁹. For example, s66(1) refers to a Bill which "has been passed by the House of Commons" - presumably passed after third reading - yet the subsection is in terms of a further second reading vote. The other main difficulty, which would be likely to arise also in any future 'in and out' proposal, is the determination of which matters are to be subject to the special procedures. S66 provided a complicated definition of Bills subject to its procedure, but did not provide any method of applying the definition to particular measures, especially in cases of dispute. If the matter were to be resolved by the House itself (possibly by arrangements set out by Standing Order), then presumably Scottish MPs would have been eligible to vote on that question. Bradley and Christie conclude their analysis of s66 by stating that "the section seems to create more problems than it resolves."³⁰

Other 'solutions' to the West Lothian Question tend to address the possibility of some form of 'English' solution, such as a series of regional assemblies within England. Generally there appears to be little demand for an all-England solution as that could encompass too large a part of the UK, especially in population terms, for meaningful devolution closer to the people. However, whatever its merits or otherwise as a constitutional reform, an all-England arrangement is, in principle, an available option, which could address the West Lothian conundrum.³¹ This could take the form, for example, of a new English body either physically within Westminster or separate from it. The latter option could perhaps be open to criticism as a potentially wasteful duplication of resources. An English body within Westminster could be, say, either legally distinct from Parliament itself, or part of Parliament as some form of an 'English Grand Committee' of the House of Commons. Recent changes to the Scottish Grand Committee³² perhaps suggest that such a committee could be granted some Chamber-like features such as questions and adjournment debates. A Standing Committee on Regional Affairs already exists under S O no. 100. Questions of membership, including possible dual-membership by English representatives, may arise in some of these possible models.³³

²⁹ See Bradley & Christie, *op cit*, for a full consideration of these issues.

³⁰ See also the brief but critical analysis of the provision by Geoffrey Smith, who described it as a "muddled modification" of the in-and-out principle, a "trouble-making provision that would be better ignored.": 'Westminster and the Assembly' in D. Mackay (ed.) *Scotland: the framework for change*, 1979, p121.

³¹ It must be emphasised that these options are set out solely for illustrative purposes in this Paper and *do not take account of any practical or procedural difficulties there may be*.

³² On which see Research Paper 94/85 of 8 July 1994, *Proposed changes to Scottish Parliamentary business*.

³³ On the English aspect see, for example, the Labour Government's 1976 consultative document *Devolution: the English dimension*, 9.12.76, discussed in V Bogdanor, *Devolution*, 1979, pp206-214.

IV Possible Irish Analogies

The main constitutional situation which could be an analogy on West Lothian Question lines is that of Ireland, both in proposed Home Rule legislation in the late 19th and early 20th century, and in the Northern Ireland period this century of Stormont and direct rule³⁴. This paper is not the appropriate place to set out these matters in great detail³⁵, as it is the comparison with the current West Lothian Question debate that it is of relevance here.

The Northern Ireland analogy in terms of the level of territorial representation inevitably arose in Parliament in the late 1970s at a time when the Government was proposing devolution for Scotland and Wales with no reduction in Scottish or Welsh representation at Westminster, while initiating procedures which led to an increase in Northern Ireland representation. A version of this alleged disparity of territorial treatment is being argued at present over Government proposals for some form of devolved body (following a referendum) for Northern Ireland as a means of maintaining the Union while denying devolution to Scotland for the same reason. See, for example, the Shadow Scottish Secretary's recent article in the *House Magazine*, where he wrote that "Ministers talk about the West Lothian Question. What about the West Belfast Question? Is the Prime Minister seriously suggesting that the rights of Northern Ireland MPs will be restricted if a new Northern Ireland Assembly is created? Similarly, does anyone seriously believe that he will cut his already slender majority in the House of Commons by reducing Northern Ireland's representation still further?"³⁶ The Prime Minister set out the differences he saw between the current Scotland and Northern Ireland situations in a speech in Glasgow on 24 February. These included, as far as Northern Ireland is concerned, the history of sectarian violence; the absence of direct representation by the mainstream political parties and the Order in Council method of legislating for the province.³⁷

A. Home Rule

Gladstone's two attempts at Irish Home Rule, in 1886 and 1893, dealt with the relationship between Irish matters and an Irish legislature on the one hand and UK matters and the Westminster Parliament on the other. His 1886 bill proposed to terminate Irish representation at Westminster - the 'Gordian knot'³⁸ - but, speaking at second reading, he recognised that this could be said to breach the principle of 'no taxation without representation' and proposed some form of Irish involvement in Westminster debates on matters of taxation, by a form of

³⁴ Brigid Hadfield, when analysing these Irish representational issues, commented that "those with short memories called this the 'West Lothian Question'" *The constitution of Northern Ireland*, 1989, p89.

³⁵ The following brief account is derived in part from Hadfield, *op cit.* and Bogdanor, *op cit.*

³⁶ George Robertson, "At the crossroads", *House Magazine*, 27.3.95.

³⁷ Speech to 'Focus on Scotland' dinner, 24.2.95, transcript.

³⁸ Morley, *Life of Gladstone*, vol II, p547. The provision is contained in clause 24 of the *Government of Ireland Bill*, Bill 181 of 1886 session 1. Throughout this Paper only House of Commons representation is considered.

joint commission arrangement for other relevant matters³⁹. Morley notes the various viewpoints on the bill's termination proposal: Parnell supported it on the grounds that regular and compulsory attendance at Westminster would be 'highly objectionable' to his party, and that "the right of Irish members to take part in purely English as well as imperial business would be seized upon by English politicians, whenever it should answer their purpose, as a pretext for interfering in Irish affairs"; Scots worried about termination creating a precedent for Scottish Home Rule, "and Scotchmen had no intention of being shut out from a voice in imperial affairs"; English Catholics feared the loss of a Catholic block in Parliament, and so on. He summed up reaction against termination as being "due less to the anomaly of taxation without representation, than to fears for the unity of the empire and the supremacy of parliament"⁴⁰. Many British Members would also, no doubt, have had in mind the novel obstructionist tactics of the Irish parliamentary party when considering a proposal for their removal from Westminster.

In his 1893 Home Rule Bill Gladstone provided for Irish representation, but on an 'in and out' basis. Under clause 9 of the *Government of Ireland Bill*, there were to be 80 Irish MPs (in place of the then 105, including the 2 university seats), who could not vote on five specified types of business, including any bill or motion whose operation "is confined to Great Britain or some part thereof". The clause also provided that "compliance with the provisions of this section shall not be questioned otherwise than in each House in manner provided by the House"⁴¹. However, during the Committee stage of the Bill, Gladstone proposed the withdrawal of the voting and deliberating restrictions of the clause, while retaining the reduced representation. This was agreed to on a division after an extended debate.⁴² The bill itself, which passed the Commons, was rejected by the Lords.

The bill which became the *Government of Ireland Act 1914* proposed a total of 42 Irish MPs at Westminster, but with no 'in and out' restrictions on their activities.⁴³ The question of representation at Westminster was closely argued during the passage of the bill, partly on the basis that the proposed legislation for the better government of Ireland also thereby significantly affected the constitution and government of the United Kingdom as a whole⁴⁴. The Act was not brought into operation because of the outbreak of the First World War.

³⁹ HC Deb vol 305 (3rd series) cc 594-6, 10.5.86.

⁴⁰ Morley, pp 564-5. See the analysis in V Bogdanor, *Devolution*, 1979, chap 2. Joseph Chamberlain insisted that retention was "not a technical point, but the symbol and flag of the controversy" (A Cooke & J Vincent, *The governing passion*, 1974, p419).

⁴¹ Cl. 9(4)

⁴² HC Deb 4th series, vol 14 cc1418-1545, 12-13.7.93.

⁴³ See s45 and sch1 part II of the 1914 Act. In debates on what became the 1920 Act, the Chief Secretary for Ireland, Ian Macpherson, said that 42 was selected for the 1914 Act "not on any logical principle, but as a sort of adjustment to meet circumstances that might arise in the future including a scheme of devolution." [HC Deb vol 127 c942, 29.3.20].

⁴⁴ See, for example, the proposed instruction to the bill committee, HC Deb vol 39 cc704-44, 11.6.12.

B. The Stormont Era

The *Government of Ireland Act 1920* provided for 13 Westminster MPs from Northern Ireland (including one university seat).⁴⁵ Conventions soon developed concerning the relationship between Stormont and Westminster, which the Speakers of the two bodies set out.⁴⁶ These conventions generally held in Westminster, although they were tested when legislation, especially of a constitutional nature, relating to Northern Ireland or what became the Irish Republic was before Parliament; when there was a Labour Government, or when non-Unionists, such as Gerry Fitt from 1966, were Members. See, for example, the Prime Minister, Harold Wilson's responses to Questions on 6 May 1965, which appear to contain West Lothian Question-type sentiments, linked to the Unionists' support for the Opposition⁴⁷.

When the situation in the province deteriorated in the late 1960s, there was renewed pressure for a more activist approach by Westminster notwithstanding the longstanding conventions. In October 1968, for example, when asked to refer to the Procedure Committee "the convention whereby members of the House are unable to discuss matters or table questions relating to the administration in Northern Ireland", the Leader of the House, Fred Peart, refused, explaining that "the House is already free to discuss, on an appropriate motion, those Northern Ireland affairs which are within the transferred field" The Liberal leader, Jeremy Thorpe, claimed that "one cause for concern is that the Government have not merely stood by the 1920 Act but have interpreted certain conventions which have no juridical validity to suppress debate ... [W]hen Ulster Members of Parliament have no inhibitions about interfering in our internal affairs, it is quite intolerable that this House does not urgently and in detail discuss matters going on in Ulster today."⁴⁸ An interesting account of the Parliamentary convention, and of the Home Office's approach to the province in the 1960s is contained in James Callaghan's book on Northern Ireland, *A house divided*.⁴⁹

⁴⁵ See s19 and sch5 Part II of the 1920 Act. Provision was also made for 33 Westminster seats from 'Southern Ireland' (s19 and sch5 Part I), but for the purposes of this paper only the Northern Ireland position is examined. See also the *Redistribution of Seats (Ireland) Act 1918*.

⁴⁶ See, for example, Mr Speaker's rulings on 19 April 1923 that "I think it is very desirable that we should not have questions on matters which we have delegated by Statute to the Irish Governments" [HC Deb vol 162 cc 2246-7, 19.4.95], and on 3 May 1923: "With regard to those subjects which have been delegated to the Government of Northern Ireland, questions must be asked of Ministers in Northern Ireland, and not in this House"[HC Deb vol 163 cc 1623-5, 3.5.23]. The Stormont Speaker ruled, for example, that "since .. we have no power to make laws on any of these reserved matters [ie under the 1920 Act], they are not *prima facie* proper subjects for discussion here, except possibly by means of certain forms of Resolution, such as an Address to the Crown." [NI Parl vol 8 cc490-2, 29.3.27].

⁴⁷ For example "I am sure the House will agree that there is an apparent lack of logic, for example, about steel, when Northern Ireland can, and presumably will, swell the Tory ranks tonight, when we have no power to vote on questions about steel in Northern Ireland..." HC Deb vol 711 cc1560-2, 6.5.65.

⁴⁸ HC Deb vol 770 cc 882-5, 21.10.68. See also, for example, an exchange during Prime Minister's Questions on 11 July 1968 [HC Deb vol 768 cc 731-3, and the follow-up written answer at c124w, 11.7.68.

⁴⁹ pp1-2.

C. Direct Rule

There appears to have been relatively little direct discussion of Northern Ireland's representation in the early days of direct rule, possibly because Stormont was regarded initially as prorogued rather than abolished. The March 1973 White Paper *Northern Ireland constitutional proposals* ruled out increased Westminster representation⁵⁰, although the Conservative party manifesto for the October 1974 general election recognised that "Ulster is at present under-represented" but linked any change to agreement on the future devolution of Government in Northern Ireland. Stormont was abolished when the Assembly was created in 1973. Since the 1970s, even during periods when various forms of Northern Ireland representative body were active, the old Stormont conventions do not appear to have been revived, not least because unlike the Stormont era, there was a Northern Ireland Office with a Secretary of State directly accountable to Parliament.

The Labour Government agreed that the Constitutional Convention established under the *Northern Ireland Act 1974* could discuss the level of Northern Ireland representation at Westminster, but when the Convention's majority report, reflecting the views of the Unionist coalition, recommended an increase to between 20 and 24, the Government rejected re-examination of the question "in advance of an agreement on a system of government commanding the most widespread acceptance." It "was aware of the strong views held by many" on the question, but also took into account the fact "that in the past 50 years some Members elected to the Westminster Parliament have not taken their seats -- another reflection of a divided community."⁵¹ This remained the Government's attitude⁵² until the Prime Minister announced, following discussions with UUP leaders, the establishment of a Speaker's Conference on the subject during the 23 March 1977 no-confidence debate.⁵³

The Speaker's Conference published its report on February 1978 recommending an increase in Northern Ireland representation to 17, with the Boundary Commission being given power to vary the number subject to a minimum of 16 and a maximum of 18.⁵⁴ Giving evidence to the Conference, the Leader of the House, Michael Foot, said that, in discussing the under-representation of Northern Ireland, "I do not believe that to do that it is necessary or desirable to bring in questions of the position of Scotland and Wales."⁵⁵ During the passage of what became the *House of Commons (Redistribution of Seats) Act 1979*, giving effect to the increase, the linkage between the level of representation and devolution arose frequently.

⁵⁰ Cmnd 5259 para 33. See also HC Deb vol 854 cc596-8, 5.4.73

⁵¹ Cmnd 6387, January 1976, para13

⁵² See, for example, HC Deb vol 870 c843, 19.3.74 (Prime Minister); vol 871 c1421, 4.4.74 (Northern Ireland Secretary); vol 884 c655-6, 16.1.75 (Minister of State, Northern Ireland).

⁵³ HC Deb vol 928 c1303-5, 23.3.77.

⁵⁴ Cmnd 7110. The Prime Minister made a statement on 19 April 1978 accepting the recommendations [HC Deb vol 948 cc447-54].

⁵⁵ Minutes of evidence, 30.11.77, HC 70-ii 1977-78, Q130.

The Northern Ireland Secretary, Roy Mason, referring to the level of representation set in the 1920 Act, said that "For the next 50 years or more Northern Ireland's under-representation at Westminster was not seriously challenged. It was generally thought fair that Northern Ireland should have a lower representation since so many of its affairs were debated and its laws made in the local Parliament at Stormont, not at Westminster." But he said that since the 1920s "the importance of central government in the lives of everybody has grown. More and more it is by the central Government at Westminster that the crucial decisions are taken and must continue to be taken." He said that this change, allied to the matters solely within Westminster's competence (such as defence and foreign affairs), meant that "the need for a broadly similar standard of representation at Westminster for every part of the United Kingdom becomes very strong indeed."⁵⁶ When responding to interventions, Mr Mason inverted the usual argument over relative representation between the four countries by claiming that "England, Scotland and Wales have been generously represented in this House over the past 50 or more years as compared with Northern Ireland"⁵⁷ He justified the increase in representation for three reasons: fairness; the lack of access of constituents to their Members because of the size of the average electorate, and the burden on Members. For the Opposition, Airey Neave said that he supported the increase on the grounds of constituency size as well as the absence of devolution for the foreseeable future.⁵⁸

⁵⁶ HC Deb vol.959 cc241-2, 28.11.78 (second reading debate).

⁵⁷ c243.

⁵⁸ cc253-4. See also the Conservative Party submission to the Speaker's Conference, HC 70-iii, 1977-78, p16.

V Representation at Westminster

As can be seen from this Paper, the issue of the representation at Westminster of the various countries of the UK has been regarded as a central concern of 'Home Rule' or devolution schemes. This section seeks to provide some background statistical information to complement the discussion of the matter in this Paper. It should not be regarded as a comprehensive analysis of the broad issue of territorial representation at Westminster.

The basic premise of many is that Scotland and Wales are 'over-represented' in the Westminster Parliament. Some would argue that this would have to be 'corrected' in any scheme of devolution for these countries. The case of Northern Ireland is often cited by reference to its apparent 'under-representation' at Westminster during its half-century of devolved government.

This Paper has already noted, most obviously through the arguments of Mr Dalyell himself, that a reduction in Scottish or Welsh representation should not, logically, 'answer' the West Lothian Question. However reduced representation may, in political terms, reduce the alleged English grievance over the 'unfair' and 'inequitable' representation of the various countries at Westminster, and thereby minimise the negative effect of the Question. The level of representation has other obvious political implications in that one political party, Labour, has for many elections won the majority of seats in Scotland and Wales.

Possibly the main defence of the current levels of representation, other than any arguments reflecting the geography and population spread of the various parts of the UK, is the need for the devolved countries to remain fully involved on those national and international matters reserved to the UK Parliament. This type of argument has been used many times over the last 100 years, as this Paper has noted. The most recent example of this is the Scottish Labour Party's March 1995 document: "Nor can we see any convincing argument that the creation of a Scottish Parliament should of itself lead to a reduction in the number of Scottish MPs at Westminster. The functions that will be retained by the Westminster parliament are extremely significant in themselves and critical for the future well-being of Scots. It is of the essence that our ability to influence these matters is not diminished."⁵⁹

The 1707 Union (Art XXII) gave Scotland 45 seats in the new 558-seat Parliament of Great Britain⁶⁰. This was less than a strict population-based allocation⁶¹ would have provided, but

⁵⁹ *A Parliament for Scotland: Labour's plan*, p6.

⁶⁰ Strictly speaking this was a totally new Parliament, not simply the continuation of the English Parliament at Westminster, although in practice (and in the eyes of many English constitutionalists) it has been often assumed to be such a continuation. The legal basis of the Union as a fundamental constitutional act is a topic well beyond the scope of this Paper.

⁶¹ Data on electorates before 1832 are meaningless so population has been used for the early years of this analysis. From 1832 onwards, however, the figures refer to over- and under-representation in terms of Wales and Scotland's shares of total UK seats compared with the total UK electorate.

this concept, over 100 years before the Reform Acts of 1832, was far less relevant in the early 18th century than in later, more democratic times.⁶² This under-representation diminished through the 18th century, due to changes in the relative populations of the home countries, and was further reduced by the Union with Ireland in 1801, when Ireland, with almost one third of the new UK's population, was granted only 100 of the 658 seats.

The 1832 reforms gave Scotland 8 extra seats⁶³, and Wales including Monmouthshire 4 more seats. The overall size of the House remained at 658, of which Scotland had 53 and Wales 31. At this stage Scotland was under-represented in terms of population, with 8% of the UK's seats but 10% of its population, while Wales was over-represented, with nearly 5% of the UK's seats but less than 4% of the UK's population. In terms of electorate, however, matters were different: Scotland had 8% of the total electorate and so was proportionately represented, while Wales had just over 5% of the UK's electorate and so was slightly under-represented.

Further changes in 1867-8 increased Scotland's share to 60 and Wales's to 33 within the 658-seat House. At this date, both countries were slightly under-represented. The 1884-5 reforms raised the number of seats in Scotland and Wales yet again, by 12 and 1 respectively in a House of 670, and this moved both countries into a position of relative over-representation. Scotland had 10.7% of the UK's seats but only 10.0% of its electorate while Wales had 5.1% of the seats but only 4.9% of the electorate.

The combination of further changes in the numbers of seats and changes in the electorates of the home countries meant that, by 1918, Scotland's share of both seats and electorate in the UK were almost equal - the country was proportionately represented - while Wales's share of seats was lower than its share of electorate: it had become under-represented again. The removal of the Southern Ireland seats and the allocation of only 13 seats (including a university seat) for Northern Ireland in the early 1920s, however, boosted the proportionate representation of the 3 mainland countries in a House of 615 seats. In 1922, Scotland had 12.0% of the total seats but only 10.8% of the electorate and Wales had 6.0% of the seats and 5.9% of the electorate. "Scottish representation moved into surplus and Welsh representation back to proportionality as an accidental consequence of the withdrawal of Ireland."⁶⁴

⁶² Iain McLean cites Burke's *Reflections in the revolution in France*: "When did you hear in Great Britain of any province suffering from the inequality of representation? ... The very inequality of representation .. is perhaps the very thing which prevents us thinking or acting as members for districts" (Quoted in I McLean, *The representation of Scotland and Wales in the House of Commons*. I am grateful to Mr McLean for access to this paper, shortly to be published in *Political Quarterly*, which is used extensively in this section of this Paper, and to my colleague Rob Clements, who prepared the statistical analyses of this section).

⁶³ The figures in this section include University seats, where appropriate.

⁶⁴ McLean, op. cit. p11.

The Speaker's Conference of 1944 was crucial to the development of the territorial representation in Westminster, as it led to the institutionalisation of the 'over-representation' of Scotland and Wales within the modern boundary review system⁶⁵, and, according to McLean, began the myth that the Union guaranteed Scottish over-representation.⁶⁶ The changes that came into effect in 1945 meant that Scotland had 11.6% of the UK's seats but only 10.2% of its electorate and Wales had 5.8% of the seats and 5.4% of the electorate. Since then, Scotland has always had more than 11% of the total seats in the UK while its share of UK electorate has fallen to 9.0% in 1994, while Wales has maintained its share of both seats⁶⁷ and electorate.

McLean concludes from his historical survey that "the over-representation of Scotland and Wales arises not from considerations of principle, but from the bargained compromises of 1944, which have been frozen into the legislation governing the allocation of seats."⁶⁸ He considered the West Lothian Question aspect of territorial representation and suggests that, if the 1920s Northern Ireland formula was adopted, ie 2/3 of its proportionate share, Scotland would receive 40 seats and Wales 22 after devolution, although he noted the possible legal difficulty of the 45 seats allocated to Scotland by the 1707 Union being regarded as an entrenched legal minimum .⁶⁹

A. The effects of over-representation

The following is based on 1994 electorates⁷⁰. The fact that both Scotland and Wales have more seats than their share of the UK electorate would entitle them to if seats were allocated on a strict pro rata basis means that their average electorates - the electoral quotas - are low. Compared with an average electorate across the United Kingdom of 67,261, Scotland has an average electorate of 54,822 and Wales 58,476. By contrast, the average electorate in England is 69,571 and that of Northern Ireland is 68,373. If the present total of 651 seats were distributed on a pro rata basis, Scotland would have 59 seats, compared with its present 72, and Wales would have 33 compared with the actual 38. England would have 542 rather than 524 and Northern Ireland would retain its present 17.

If the recommendations of the current Boundary Commissions take effect, the size of the House will rise to 659 seats. There will be 529 in England, 72 in Scotland (no change), 40 in Wales and 18 in Northern Ireland. Again using 1994 electorates, a strict pro rata allocation would give 549 seats to England, 59 to Scotland, 33 to Wales and 17 to Northern Ireland. The figures do not sum to 659 because of rounding but the exact figure for Northern Ireland of 17.49 suggests that 18 seats there would not be an unreasonable total.

⁶⁵ See for example the Boundary Commission for Scotland's consideration, in its recent report, of the statutory rules on Scottish representation: *Fourth periodic report*, Cm 2726, February 1995, pp16-19 and appendix D.

⁶⁶ McLean op cit p12

⁶⁷ Which will rise as a result of the current boundary review.

⁶⁸ McLean op cit p18.

⁶⁹ McLean op cit p20.

⁷⁰ OPCS Electoral Statistics 1994.

VI Conclusion

Precedents and analogies in core constitutional matters can be difficult and unhelpful as so much can depend on the circumstances of the periods when the devolution arrangements were conceived and enacted, and when any devolution was put into practice. For example, Irish Home Rule legislation was proposed in the late 19th century, when Ministers and Members would have had the memory of Irish parliamentary obstructionism fresh in their minds, perhaps prompting a desire to 'be rid of Ireland', at least in Parliamentary terms. There was also some feeling, on *both* sides of the argument, that action on Ireland could lead to similar developments in Scotland and Wales.

The practical parliamentary effect of reduction in, or abolition of representation at Westminster from the devolved area, especially any effect there may be on the balance of parties in the Commons (including formal and informal alliances or pacts), may well be an important consideration for Ministers and Members alike. Hence the various Irish legislative proposals and provisions over the past 100 years for reduced representation; no representation; 'in and out' representation; retention of existing representation, and even, in the 1970s, increased representation. As has been noted, representation cannot be considered simply as a question of numbers of Members. The extent of their permitted participation in all aspects of parliamentary business, such as the 'in and out' proposals and s66 of the *Scotland Act 1978*, must also be taken into account.

The relationship between the Westminster Parliament and any devolved Parliament will be a product of a number of factors. The parameters of the relationship can be established in a formal manner (legislation, Standing Orders, Speakers' rulings and so on) or informally by habit and practice. As is common in the development of Parliamentary practice, the testing of the limits of these parameters by, for example, those opposed to devolution or on 'West Lothian' grounds, may lead to more formal, rigid enactment of the relationship. A further important factor would be the existence and role of the relevant Secretary of State for the devolved territory (or the various departmental ministers, in the case of England) if such posts are retained in a devolution arrangement. There was no Secretary of State for Northern Ireland during the Stormont era, for example, and this may well have contributed to the distinctive character of the Westminster-Stormont relationship over that half century.

Just as modern UK Governments and Parliaments have had relatively little experience of dealing directly with practical sovereignty issues until accession to the European Communities in 1973, so too is there little experience of domestic devolution or other forms of internal territorial arrangement. In the last century or so, the most obvious relationship model would have been the Imperial one, with its colonial and dominion legislatures. During this period Westminster was, in a meaningful sense, 'the Imperial Parliament'. There are even references

in Hansard to Northern Ireland being described as a 'dominion'⁷¹, and Herbert Morrison, as Leader of the House, replying to a question in 1948, said that his Labour questioner "is constitutionally wrong in declaring the Parliament of Northern Ireland to be a subordinate Parliament. Within their statutory powers, the Government and Parliament of Northern Ireland are independent" and, in response to another Member said that "I cannot be expected to answer questions which are constitutionally within the province of another Government, and within their statutory powers".⁷²

All this suggests perhaps that the *differences* between current issues of devolution for Scotland and/or Wales and the various Irish situations could be said to be more relevant than what they may appear to have in common. The absence of widespread violence or parliamentary obstruction; the fact that the devolved areas will be part of the mainland; the absence of community/religious divides on the Irish scale; the different parliamentary arithmetic; the distinctive governmental traditions in Wales and, especially, in Scotland, as well as the different legislative provisions that there may be, could well mean that devolution for Scotland and/or Wales may not necessarily use, as an exact parallel, the last hundred years of Irish constitutional development. Nevertheless it is likely that the West Lothian Question, encompassing as it does so many of the real or alleged aspects and difficulties of any territorial-based constitutional reform, will remain (even if renamed at some point) a live issue in the foreseeable future.

⁷¹ See eg HC Deb vol 416 cc2517, 6.12.45.

⁷² The full exchange is at HC Deb vol 448 cc 534-7, 4.3.48.

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