

Day 3: Edinburgh Godfrey Thomson Hall St John Street Edinburgh EH8 8AQ

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15		Thursday, 10 May 2012
16	Day 3: Edinburgh. Godfrey Thomson Hall, Thomson's Land, St	
17	John Street, Edinburgh. EH8 8AQ	
18	(10.57 am)	
19	Evidence from PROFESSOR JOHN CURTICE and RACHEL ORMSTON	
20	THE CHAIR: Good morning. Thank you very much for coming.	
21	Can I just put on record the Commission's thanks to the	
22	University of Edinburgh for the arrangements made to	
23	hold this meeting and our own thanks to	
24	Professor Jeffery for these and other arrangements.	
25	I also want to say to you that, as you can see, there	
	will be a transcript, and it will be sent to you for	
	correction. It will be then, when corrected, put on the	
	website.	

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1 Can I begin by perhaps testing the depths of your
2 pessimism? One of our witnesses said that the
3 West Lothian question was inherently unanswerable.
4 Another one said its principal importance was to
5 Conservative Members of Parliament, and any solution
6 designed to improve representation for England would
7 benefit only England. Are these too pessimistic or is
8 there, in general -- we will probe it more deeply
9 later -- the prospect of a solution somewhere in the
10 ether, if you can only locate it?

11 JOHN CURTICE: You do not need me to tell you, given where
12 we are starting from, the difficulties involved in terms
13 of existing parliamentary procedure of sorting the
14 question out. Number one, what is an English bill --
15 you will know much more about that than I do.

16 Number two, obviously, is that there is a concern
17 out there that if indeed you end up with an UK
18 government that has an overall majority in the House of
19 Commons, but only on the basis of including
20 representation from outwith England that -- it lacks
21 a majority within England -- what does that then mean
22 for the stability of government, the ability of
23 government to get legislation through? Of course,
24 insofar as more and more bits of public policy for
25 Scotland, Wales and Northern Ireland become devolved, as

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1 they will, that becomes arguably more of a pressing
2 issue as more and more of government policy effectively
3 becomes English policy.

4 The problems, as it were at the technical level, are
5 obvious. The "rational solutions" are obvious. They
6 are, as we suggest in the paper, essentially to
7 introduce some form of devolution to England. If we
8 have a symmetrical form of devolution these problems are
9 solved. The problem is, as we suggest, that so far at
10 least England does not demonstrate a great deal of
11 interest in going down this road. Therefore we are left
12 with the issue of whether or not we can possibly deal
13 with parliamentary procedure in such a way that might
14 meet some of the apparent concern within public opinion
15 about the current situation inside the House of Commons,
16 indeed arguably also the House of Lords, in a way that
17 is both practical and deals with the issues.

18 But this is very, very well worn territory. As far
19 as the public is concerned they will say: well, you know
20 if it's an English law why do Scottish MPs vote on it?
21 End of story, simple. It's only when we start looking
22 at the detail that becomes more difficult.

23 THE CHAIR: Let's go to the part of life which is more
24 difficult, which to a degree -- a considerable degree --
25 the statistics which you have given us in your paper

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1 elucidate. It seems that support for English Votes for
2 English Laws has gradually but consistently increased,
3 if you measure it by the number of those who strongly
4 agree with the proposition that the Scots, Welsh and
5 Irish should not vote on English bills. But if you
6 aggregate the strongly agrees and the agrees, you do not
7 get much of an increase.

8 RACHEL ORMSTON: You do not, that's true.

9 THE CHAIR: What do you think is behind that? It seems to
10 me that everyone agrees, both those who claim to be
11 English and British, that the non-English votes should
12 be excluded. But the mainspring of all this is much
13 more difficult to arrive at. What is it? What is
14 driving this? Is it want of a parliamentary fix which,
15 if we find, it will all go away? Is it a new kind of
16 English nationalism, legitimacy problems passing from
17 Scotland and Wales to England? Or is it about English
18 fairness? It always seems to me English are attached to
19 fairness more than anyone else in these islands.
20 Whichever one it is will dictate a different solution.

21 RACHEL ORMSTON: I suppose in terms of the -- one of the
22 points we make in the paper is we have only asked this
23 question about whether the voting rights of Scottish MPs
24 should be restricted since devolution. So one of the
25 points that we make in the paper is it may have been

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1 always been the case that people in England think
2 Scottish MPs should not be allowed to vote on matters
3 that affect England primarily, so we have no way of
4 looking at how it has increased. It certainly has not
5 increased since devolution, except for the fact that, as
6 you point out, the intensity of feelings, so the
7 proportion of people who strongly agree that the voting
8 rights of Scottish MPs should be restricted seems to
9 have increased.

10 The other point we make in the paper is that, on our
11 evidence, the sort of evidence for a kind of rising
12 sense of kind of English nationalism linked with concern
13 about the West Lothian question seems to be fairly
14 tenuous really. It's always been the case that people
15 who feel more English, whose national identity is
16 primarily English rather than primarily British, are
17 a bit more exercised about the West Lothian question.
18 It is not massively different and actually a majority of
19 people who feel British also think that Scottish MPs
20 should not be allowed to vote on matters that only
21 concern England. So yes --

22 JOHN CURTICE: I guess we would probably say to you that the
23 impression we have is that for many respondents this is
24 a matter of logic rather than emotion. Ie it seems
25 a little odd that MPs who do not represent England

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1 should be voting on English laws. Because if it were
2 strongly tied to a sense of "English nationalism" we
3 would expect the difference in the attitudes of those
4 who say they are predominantly English, as opposed to
5 being predominantly British, to have been bigger. Even
6 those that say, "I am British," also say, "but hang on
7 that does not seem to make sense." So I think my
8 reading of it is that if you put this proposition to
9 people they say, "Hang on, it is not obvious why this
10 happens."

11 Your first question -- it's the classic social
12 science problem of how do I explain why something has
13 not happened? Of course, as a social scientist I am
14 always in trouble when I have to explain why something
15 has not happened. I guess I am almost tempted to
16 say: why should you expect it to change? Once you reach
17 a situation where around two thirds of the public agree
18 with the proposition, you tend to get the same answer.
19 There's no great reason to anticipate some enormous
20 change thereafter.

21 RACHEL ORMSTON: It's also maybe worth pointing out that
22 there's two thirds that agree, but then there's also
23 around one in five at that just neither agree nor
24 disagree. So maybe it's just that a fifth of the
25 population have yet to feel exercised enough to express

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1 an opinion on it, even when you prompt them on it.

2 THE CHAIR: Does that add up to the expectation that if
3 a parliamentary fix was found, these figures would drop;
4 or would it be the case that whatever goes on in
5 parliament is a mystery to most people, and you have not
6 really solved the problem -- though in fact you have?

7 RACHEL ORMSTON: It depends which figures you are expecting
8 to drop because obviously if you address the
9 West Lothian question, then asking -- the question we
10 ask is now that Scotland has its own parliament,
11 Scottish MPs should not be allowed to vote in the House
12 of Commons on matters that only affect England.
13 Actually that principle would stay the same, so if we
14 asked that question again I would expect exactly the
15 same proportion of people to say: yes, no, we agree with
16 that. But now you have done it.

17 So I suppose the question is more whether, once you
18 address that will it address any of the other sorts of
19 potential sources of resentment around devolution. One
20 of the other things we looked at in the paper was the
21 resentment over the sort of financial settlement and the
22 perception that people in -- that Scotland gets more
23 than its fair share of public spending. Actually that's
24 an area that has changed over the last five or six
25 years; there has been an increase in the proportion of

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1 people in England who feel Scotland is getting more than
2 its fair share.

3 But we also looked at the two questions together and
4 although there is an association, so as you would expect
5 people who feel Scotland gets more than its fair share
6 are more likely than people who do not feel that to
7 say -- to want something done about the West Lothian
8 question. Again, the association is not that close,
9 it's still a majority of people who are not bothered
10 about Scotland's share -- of Scotland's spending who
11 want something done about the West Lothian question.

12 So it's not necessarily the case that all these
13 sources of -- potential sources of resentment spring
14 from exactly the same well spring and it may be, as John
15 says, that the West Lothian question is just a logical
16 issue for people, whereas perhaps the concern about
17 share of spending is driven by other forces and more
18 media coverage and changes in government in Scotland and
19 so on.

20 JOHN CURTICE: I would make two other points to answer your
21 question. One is it depends on what the fix is and
22 whether people think it's adequate. Number two, as
23 always in politics it will depend on how it was solved.
24 So if politicians were willing to make it an important
25 issue and were to say to people in England, to draw

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1 their attention to it and say: things have now changed
2 and nothing can now pass the House of Commons unless it
3 has the manifest support of English MPs, and were
4 willing to sell that, people might sit up and take
5 notice.

6 If on the other hand, if at some point at 11 o'clock
7 on a Thursday night somebody changes the standing orders
8 of the House of Commons and nobody tells anybody they
9 may still not be aware that anything has changed.

10 THE CHAIR: That's rather what I feared. Can we pass on to
11 the shaping, if any, of English Votes for English Laws.
12 There's a spectrum. At one end there's an English
13 parliament, which your figures show no one very much
14 wants, believing they have one already, as they have
15 since 1707.

16 JOHN CURTICE: Indeed.

17 THE CHAIR: The other end is the proposal there should be
18 a balance in the procedure of the House between English
19 votes, purely English votes, and a UK override. The
20 details of that you would have to work out. These are
21 the two ends of the spectrum. As I said, English
22 opinion does not want federalism or an English
23 parliament. Changes purely inside the walls of the
24 chamber of the House of Commons will not stick because
25 all you need is a government motion saying

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1 "notwithstanding ...".

2 So maybe, with the best will, it would be impossible
3 to devise an answer, even a parliamentary fix, to the
4 West Lothian question which would satisfy English
5 opinion. Would that be a great disaster? Would the
6 figures which you have found gather speed? Or would
7 people just get used to the irritation, the
8 illogicality?

9 JOHN CURTICE: The answer is, of course, we can only guess.
10 My guess would be that, at the moment at least, feeling
11 in England is not sufficiently intense about this issue;
12 that the failure to find a fix would not necessarily
13 have that much impact. But it is, to be honest,
14 a guess.

15 In part again, it will come back to whether or not
16 the distinction between a set of English politicians and
17 a set of UK politicians for what laws we pass makes
18 a difference. In other words, if indeed we were to have
19 a government that a) was dependent on a non-English
20 majority and b) was indeed pursuing controversial policy
21 that was indeed unpopular in England on the back of that
22 majority, then the issue would become politicised - in
23 exactly the same way as the issue of the absence of
24 devolution in Scotland was politicised through a certain
25 narrative of the poll tax, albeit a narrative which is

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1 capable of being challenged. So that again, all of that
2 makes, to be honest, a big difference.

3 But at the moment my guess is, but it is a guess,
4 this is not something that people are spending a great
5 deal of time being concerned about; saying this really,
6 really is unfair to England. But obviously it really
7 does depend on future political developments.

8 THE CHAIR: Can you explain a remark in your paper that "it
9 should not be presumed that any such move to satisfy
10 England opinion, will necessarily have much impact on
11 wider attitudes in England towards the future governance
12 of the UK". So we solve the West Lothian question, but
13 the cart does not run any faster.

14 RACHEL ORMSTON: That kind of comes back to the point that
15 I was making earlier, which is about how much there is
16 a sort of single source of English resentment around
17 devolution, and how much actually different kinds of
18 considerations come into people's opinion on the
19 West Lothian question, versus their opinion on
20 Scotland's share of public spending, versus their
21 opinion about other things. Our analysis would
22 basically suggest they are not necessarily intimately
23 related, so solving one doesn't necessarily fix the
24 other, you still need to --

25 JOHN CURTICE: If you think that changing the procedures of

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1 the House of Commons with respect to so-called
2 English-only legislation is going to be a sufficient
3 answer to the potential for resentment in England to
4 destabilise the Union, we would suggest - we are not
5 sure we would go that far.

6 But on the other hand, basically our argument to you
7 is, if you can find a fix you will be going with the
8 grain of public opinion; you will be going with the
9 grain of public opinion on both sides of the border. We
10 cannot see any reason why, so far as public opinion is
11 concerned, you should not do it. On the other hand we
12 are not saying to you, "But there is an overwhelming
13 clear, strong demand for a fix, rooted in a very strong
14 sense of English resentment and English nationalism
15 which means that, unless you do not do it, the Union is
16 dead tomorrow." That's to give you some idea as to the
17 kind of argument we are using.

18 THE CHAIR: We just touched on money, the Barnett formula.

19 One has come to understand the Barnett formula is not an
20 indicator of relative need, it's very complex and it's
21 less than transparent. A committee of the House of
22 Lords, three or four years ago, said that one of the
23 main indicators was seriously defective and the whole
24 edifice should come down and be rebuilt.

25 The significance for the West Lothian question is

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1 that Members of Parliament, English Members of
2 Parliament, vote on English laws. The extent of the
3 bill is England, but the effects of the bill resonate in
4 the rest of the United Kingdom. On the other hand,
5 Scotland is said to do quite well out of the Barnett
6 formula and I dare say that successive governments of
7 any hue would want to leave it alone. But, as
8 devolution spreads, as the English Votes for English
9 Laws is unresolved, should we not have a radical review
10 of Barnett? Because if we do not -- this issue is not
11 for this Commission, but it's material because if the
12 Barnett formula remains an irritation, then anything we
13 do, or recommend within the House of Commons will have
14 elements of irritation still in it.

15 JOHN CURTICE: There are all sorts of aspects to that. In
16 a sense -- part of what we are saying to you is: yes, we
17 agree. Because the link between attitudes towards
18 West Lothian and towards Scottish public spending are
19 not strongly linked, do not expect one to solve the
20 other.

21 Politically I think the answer to you is
22 this: rather than England taking on the Barnett formula
23 against the wishes of Scotland, the political process in
24 which we have been engaged for some time now is to
25 invite the Scots to solve the Barnett problem by

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1 increasingly taking on responsibility for funding their
2 own spending.

3 In other words, the recently passed Scotland Act is
4 fundamental here in terms of it beginning to introduce
5 the principle that funding in Scotland depends on
6 revenues raised in Scotland. Now, indeed it's already
7 the case, once that Act is implemented, that decisions
8 at the margin about levels of spending in Scotland will
9 depend on revenues raised in Scotland. Of course the
10 Act has also been framed in such a way that it would be
11 possible to devolve further tax powers to Scotland
12 without primary legislation.

13 So one way of solving it, of course, is within
14 Scotland. The notion that Scottish revenues should go
15 to pay for Scottish spending is one that has pretty
16 popular resonance. So I suppose the -- politically my
17 answer to you is, if I were in government I would let
18 the Scots solve this problem for me by being
19 increasingly willing to take on responsibility for
20 themselves for raising their own revenues. As a result
21 therefore, we are potentially in a rather rare win-win
22 situation in terms of the territorial politics, which
23 is, insofar as Scotland becomes increasingly self
24 financing, the answer to England is: well, actually no
25 the free personal care in Scotland and the free tuition

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1 fees are actually being funded out of taxes in Scotland.

2 There might obviously still be some transfers but
3 the less the transfers become, arguably the less salient
4 this issue will be. So I think politically, as it were,
5 England can probably lie quite low and allow the Scots
6 to solve the problem. So long as England, of course, is
7 willing to allow Scotland to have more devolution and of
8 course then we are into the whole debate about what
9 alternatives to the status quo may or may not be on the
10 table, either before or after an independence referendum
11 in Scotland.

12 THE CHAIR: Thank you. Charlie?

13 PROFESSOR CHARLIE JEFFERY: Thank you. I wanted to follow
14 up one point from the Chair to begin with, and that's
15 about the intensity of feeling. More people strongly
16 agreeing that Scots MPs voting on English laws are
17 a problem. I am not clear about the salience of this
18 and you pointed a little in the direction that it may
19 not be terribly salient, it may not be at the top of the
20 list. But is there any evidence from the public
21 attitudes work that you have done which ranks this issue
22 in the importance of the public mind vis a vis other
23 issues.

24 RACHEL ORMSTON: The short answer is no. As we were
25 preparing this paper -- it's one of those hindsight

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1 things, I wish we had asked that. We are presenting
2 people with the fact that Scottish MPs are able to vote
3 on English laws in the question, and that may be
4 something that they were not aware of and never thought
5 about before, do not actually particularly care about it
6 in the scheme of things. But as John says, on a logical
7 level, agree that that should not be the case at this
8 point.

9 JOHN CURTICE: You should know perfectly well, Charlie, that
10 for the most part in opinion polls that ask people the
11 importance of questions of political process, versus
12 questions of material outcome, material outcome always
13 wins. That does not mean to say when issues of
14 political process come before the public they don't
15 often engage in them. If you ask people in Scotland
16 whether independence matters or not it will not come
17 high up anybody's list, but because it's a subject of
18 significant cleavage, it does raise very substantial
19 debate because it's a position issue, rather than simply
20 a valence issue to use the social science jargon.

21 I think what one can say to you is that, pulling the
22 trends on the answer to the West Lothian question
23 together with the trends on the finance question, there
24 are signs that England out there is beginning to
25 realise: hang on, the Scots are doing quite well out of

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1 this, are they not? To that extent at least there's
2 some semblance of people beginning to be aware.

3 But equally of course it's also true north of the
4 border, people in Scotland are beginning to become more
5 aware that, as far as finance is concerned, they get
6 a rather good deal. The proportion of people in
7 Scotland who think they don't get a fair deal out of
8 public spending in the UK has dropped quite markedly.
9 So actually opinion on both sides of the border has been
10 moving in the same direction, saying Scotland does
11 reasonably well and in the case of England that perhaps
12 Scotland does relatively well.

13 But even so, that said, despite all of the rhetoric
14 and all of the arguments going on south of the border in
15 the last ten years it is still the case, if you simply
16 give people the question cold, which is what we do
17 deliberately, you still get less than half of people in
18 England saying: hang on, yes, they get more than their
19 fair share.

20 So there are signs of movement -- the other thing
21 that I would say is that if you really wanted to say
22 this is something that's becoming a demand rooted in
23 a sense of nationalism, which I think in a sense is
24 probably a crucial element, then it does not seem to be.
25 If you start tracking attitudes towards the West Lothian

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1 question or to the financial situation and you track
2 over time the differences in attitudes between those who
3 say they are British and those who say they are English
4 it is difficult to find consistent, statistically
5 significant evidence that the views of these two groups
6 are diverging over time.

7 So insofar as you might want to feel that these
8 issues are matters -- if they are indeed, as I suggested
9 earlier, matters of emotion rather than matters of
10 logic, and that an emotional impetus for people wanting
11 these issues addressed would be tied to a strong sense
12 of English identity, that's still difficult to find
13 because the difference between the views of those who
14 express an English identity and those who express
15 a British identity does not look as though it is
16 particularly high.

17 PROFESSOR CHARLIE JEFFERY: I have a follow up, which is
18 methodological really. You have the line in your paper:

19 "We cannot be sure how far the introduction to the
20 survey question about English Votes on English Laws,
21 which reminds people of the existence of
22 a Scottish Parliament, then stimulates a reaction."

23 In other words you might be leading them through
24 that questioning.

25 How, if this Commission were to have the opportunity

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1 to find other evidence, how would you advise us to
2 design the research that would remove that problem?

3 JOHN CURTICE: I think it would be interesting to see what
4 happened if you simply gave people the question: MPs
5 from Scotland should not be able to vote on laws that
6 only affect England. I would drop the introduction and
7 see what happens.

8 I am guessing, you may not find that much difference
9 because I suspect it's the second half of the question
10 people hear and say: hang on. In other words, in
11 exactly the same way as if you asked people in
12 Manchester, "Do you think councillors from Liverpool
13 should be able to have a say in what happens in
14 Manchester?", they would say no. It will strike them as
15 odd.

16 But yes, I would be delighted to see it done
17 differently -- the truth is, however, I think that in
18 all of the commercial polls, at least to the best of my
19 knowledge, it's been done in that way. The question was
20 first framed, as you can see, in the immediate wake of
21 devolution, and I think at that point we just probably
22 simply felt we could not think of a way of asking the
23 question that didn't deal with it in that way. But it
24 would be interesting to do it differently now,
25 absolutely.

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1 Ideally you would do a split sample design on the
2 same survey and ask half the question one way and half
3 the other and find out how much difference the wording
4 actually makes. What I would say to you, just to
5 pre-empt another possible question, insofar as you might
6 want to know whether or not -- to get into questions of
7 whether or not -- should only English MPs only ever be
8 able to vote on any English law at some particular stage
9 of the parliamentary process, as opposed to some other
10 one~...

11 I think at that point the public would say: hang on,
12 forget it guys, this is a bit too complicated.

13 PROFESSOR CHARLIE JEFFERY: I have followed your surveys
14 with interest over the years, and indeed helped to fund
15 them at one point.

16 JOHN CURTICE: Indeed.

17 PROFESSOR CHARLIE JEFFERY: Which brings me to this
18 question: you have a tradition of looking at three
19 things together when you are looking at the
20 English/Scottish relationship: the West Lothian
21 question, the fair shares question, and one which you
22 have also touched upon: should the Scottish Parliament
23 raise the money that it spends?

24 You have not brought that third question into this
25 paper. I was wanting to ask whether you would see

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1 a strong or stronger association between the two
2 questions; that is West Lothian question and the
3 Scottish Parliament raising its own cash question, than
4 you see between the West Lothian and the fair shares
5 questions?

6 JOHN CURTICE: I do not think we have done that.

7 RACHEL ORMSTON: I do not think we have. I would guess not
8 just because I suspect that the paying for it -- well,
9 although actually, you could see the Scottish Parliament
10 paying for its own services out of taxes collected in
11 Scotland, I suppose, as being the equivalent to the
12 West Lothian question in the sense that if people are
13 answering on the basis of logically that's what should
14 happen. Whereas the fair share question is more based
15 on perceptions of what they have read in the media and
16 the rhetoric coming from English MPs and so on. Then
17 perhaps they would be more closely linked, but I think
18 we would have to do the analysis to tell you, which we
19 could do after this.

20 JOHN CURTICE: Part of the answer Charlie is that I think --
21 our thinking on that question has moved on. It's a very
22 simple agree/disagree question to a simple proposition.
23 Certainly in the research we have been doing in Scotland
24 we have almost dropped that question and have been
25 focusing much more on questions designed to try and get

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1 at particularly the principle behind the
2 Calman Commission and the Scotland Act, which gives
3 people a variety of options, as opposed to simply saying
4 whether you agree or disagree with the proposition. So
5 I think it's probably true it's also moved on.

6 For what it's worth there's a paper Rachel wrote
7 which is available on the web which again shows that
8 attitudes in England have -- again, in response to that
9 question -- have certainly moved somewhat towards the
10 strongly agree end of the spectrum. But the point is it
11 comes back partly to my answer to the Chair earlier, is
12 that this is a question which we have asked on both
13 sides and everybody in Scotland agrees too; it's not
14 a source of division. Scotland will say: yes, of course
15 we should, because it's based on the presumption that
16 Scotland might be better off as a result.

17 PROFESSOR CHARLIE JEFFERY: Can I ask one final thing about
18 different groupings of people. You say, very
19 interestingly, that partisan affiliation produces some
20 differences but the least supportive of English Votes
21 for English Laws are Labour party affiliates and that's
22 at 60 per cent, so it's still a very clear majority.

23 That strikes me as quite significant given that the
24 main proposals for reform in this area have come from
25 the Conservative party. I think we can see from this

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1 data, and I am guessing this applies to those other two
2 questions as well, that there is uniform -- well not
3 necessarily uniform but pretty strong equivalences of
4 opinion between affiliated supporters of different
5 parties.

6 JOHN CURTICE: Absolutely. Therefore, although at an elite
7 level doing something may be regarded as a partisan
8 manoeuvre, that's not necessarily an argument that will
9 necessarily have much resonance with the public.
10 Absolutely. Which again is part of our argument -- we
11 basically went through a whole variety of reasons as to
12 why you might think you shouldn't do this, and equally
13 a whole variety of reasons why you might think it's
14 crucial to do this.

15 The answer is you really cannot find any reasons why
16 you should not do it, but equally difficult to find much
17 evidence to say that it's crucial to do it. Which gives
18 you an awful lot of leeway. But insofar as you were to
19 do something, you would probably be going with the broad
20 grain of public opinion, though do not necessarily
21 expect the flag of St George to be waved from the
22 rooftops in applause if indeed you should succeed in
23 getting the change to be made.

24 PROFESSOR YVONNE GALLIGAN: Good morning Rachel, good
25 morning John. Your responses to the questions to date

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1 have been very interesting and have covered a lot of the
2 ground that I was going to cover. I think the message
3 is that the public, either side of the border, are happy
4 with a tinkering of a process that facilitates a more
5 distinctive English voice. Broadly, if I could sum it
6 up.

7 JOHN CURTICE: To put it slightly differently: people in
8 Scotland can think of better things for MPs to be doing
9 than voting on laws for England.

10 PROFESSOR YVONNE GALLIGAN: Okay. Fine you can look at it
11 that way. That brings up the issue of representation as
12 well, and a theoretical discussion about what Scottish
13 MPs think they are in parliament to do, and to
14 represent. But that's probably a little bit further
15 than we want to go at this point.

16 I think it's been very helpful, your clarification
17 that the demand is not rooted in a distinctive English
18 nationalism, which is one of the issues that I have been
19 very keen to tease out; to see to what extent is this
20 a genuine nationalist claim from the English political
21 community. So that's very helpful.

22 What I would like to explore a little bit further
23 though with you is what you would imagine the response
24 would be, the public response would be, to the issue of
25 Scotland becoming more independent, independent of the

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1 Barnett formula, independent of financing through its
2 being able to finance its spend through its own
3 resources.

4 To some extent the larger implication of that is
5 that the social union that is the UK, would be to some
6 extent fractured or differentiated or differentially
7 distributed. Do you have a sense of how that would play
8 out in public opinion?

9 JOHN CURTICE: North of the border, yes. North of the
10 border, on a number of occasions now we have asked
11 people: who do you think should be responsible for
12 making the principal decisions for Scotland about
13 various policy acts? So we dropped words like
14 independence, devolution; all these complicated
15 political science concepts and simply said to
16 people: who do you think should be running the show in
17 these various areas?

18 What you find first of all -- we had virtually
19 exactly the same results on about three or four
20 occasions. We asked people: who should be responsible
21 for schools? Devolved already, two thirds say
22 Scottish Parliament, most of those who do not say
23 Scottish Parliament say local authorities.

24 Who should be responsible for the health service?
25 Two thirds of people in Scotland say it should be the

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1 Scottish Parliament. Those are two areas that have been
2 devolved.

3 Ask people about defence and foreign affairs, which
4 is the quintessential feature of an independent state,
5 and we get down to about a third. We then ask people
6 about welfare benefits or about taxation and we get
7 around three fifths saying it should be the
8 Scottish Parliament. In fact, in 2011, somewhat worried
9 about whether people really know what you mean by
10 welfare benefits, and taxes~...

11 So actually this year we asked the question
12 specifically about old age pensions. This is a popular
13 welfare benefit, which really arguably is about risk
14 sharing. Actually I think it's about two thirds think
15 it should be the Scottish Parliament that should decide.

16 Similarly we asked specifically about income tax,
17 and it was the same. We've also gone on to say -- of
18 course do not expect the public to be consistent -- you
19 then go on to say to people would it be~-- again, we
20 have worded the questions differently from the way that
21 perhaps Charlie would have been aware of in the past.
22 We have asked: is it okay for the income tax to be the
23 same as in England, or can it be different? We have
24 asked the question different ways around, so you are
25 asking people if it's okay for Scotland to be different

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1 from England, or is it okay for England to be different
2 from Scotland et cetera, et cetera.

3 The truth is people want the decision made in
4 Holyrood, but they do not necessarily want a different
5 decision. Which arguably is not dissimilar from the
6 situation in Northern Ireland with respect to social
7 security, where there is a tradition of it being
8 devolved, but actually the rates are more or less the
9 same.

10 The answer to you is that although the
11 Calman Commission went on a great deal about the social
12 union, that does not, at least as far as Scottish public
13 opinion is concerned, seem to be something that is
14 immediately there in public opinion. The dividing line
15 seems to be -- basically, it's home rule. The dividing
16 line is between what is domestic and what is foreign,
17 what is foreign in Scotland is still regarded as
18 London's responsibility -- which is why the debate about
19 devolution max has taken off. We can then go into all
20 complicated things because the truth is no one single
21 option has a majority of opinion.

22 Amongst the people who say they are in favour of
23 taxation and welfare benefits being devolved, half of
24 that group actually wants Scotland to be independent.
25 So no single position, either independence, devolution

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1 max or the status quo has the majority position, but
2 what you can demonstrate is that devolution max is the
3 Condorcet winner.

4 So the answer is that north of the border it looks
5 as though devolving the decision, though not necessarily
6 introducing policy variation with respect to things that
7 are thought to be crucial to the social union, would not
8 be a problem.

9 I am also kind of reminded, it's amazing how these
10 things happen, but during the course of the whole debate
11 about devolution one can think of two areas that once
12 upon a time it was being argued it was absolutely
13 impossible for this to be devolved. If you go back to
14 the debate of the 1970s, the universities said we cannot
15 possibly be devolved. What happens? A Conservative
16 government, remember a Conservative government in the
17 1980s decides to transfer responsibility for the
18 universities to the then Scottish office and, as
19 a result, it becomes devolved.

20 More recently in the whole debate about introducing
21 a local income tax in Scotland people say no, no it's
22 possible to do anything about the council tax benefit.
23 If you go for a local income tax, you will no longer get
24 the council tax benefit. What happens? A Conservative
25 led government suddenly decides it wishes to lose

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1 responsibility for council tax, give it to English local
2 authorities and therefore, as a result, by accident it's
3 also been devolved for Scotland, thereby making it
4 easier for a future Scottish government to introduce
5 a Scottish local income tax.

6 We have these debates and apparently devolving this
7 area is impossible and a few years later it happens --
8 I think in truth as far as public opinion is concerned
9 it is not clear that in Scotland that there is some
10 great barrier to devolving large areas of domestic
11 public policy including things that philosophically you
12 might regard as being central to the social union.

13 On the other side of the border it is much more
14 difficult to tell, I do not think we know anything like
15 as much about the potential reaction in England towards
16 more devolution other than at the moment -- my reading
17 of English public opinion is essentially: if the Scots
18 want to go off and do their own thing that's fine, it's
19 up to them. But, by the way, we really would still like
20 to be part of the same country please.

21 RACHEL ORMSTON: Insofar as English public opinion would
22 favour Scotland raising its own taxes to pay for its own
23 services, you could infer from that that some sort of
24 devolution max sort of position might well go down in
25 England just as well in Scotland.

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1 In terms of the social union issue, I was thinking
2 about that in a slightly different way in that I think
3 the issue seems to be people want to be able to make
4 decisions about their taxes and welfare benefits in the
5 Scottish Parliament. But it's almost as if they want to
6 be able to preserve the union -- the social union
7 because Scotland wants to preserve the same level of
8 welfare benefits and so on as England, rather than
9 having it imposed on them. So it's more about where the
10 locus of the decision is, rather than the decision being
11 different or --

12 PROFESSOR YVONNE GALLIGAN: In fact that was one of the
13 points that I wanted to raise with the Scots -- would
14 the Scots be so keen to have fiscal autonomy and
15 independence if the consequences of it were a reduction
16 in services, or a reduction in social credits or
17 whatever, that meant that they became out of line and
18 disadvantaged in terms of England. All you have to do
19 is look at how England has very much resented the free
20 prescription charges in the other devolved regions. So
21 I imagine that would raise tensions and maybe the Scots
22 would not be so keen.

23 RACHEL ORMSTON: Yes, but not necessarily. We have asked
24 people in Scotland on a fairly regular basis whether
25 they think that if Scotland were to become independent

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1 taxes would have to go up, or whether they would go up
2 or down or stay the same. The majority of people say
3 they think they would have to go up but actually, if you
4 look back, the same proportion of people -- even more
5 people actually I think said that before devolution and
6 it did not put them off voting for devolution. So it is
7 not necessarily the case that --

8 JOHN CURTICE: Taxation is not the crucial issue. The
9 crucial issue is the economic position of Scotland more
10 generally. To give you the tabloid version, we did ask
11 on Scottish Social Attitudes very recently a question.
12 We said to people: suppose that it was agreed that as
13 a result of independence the standard of living --
14 everybody in Scotland would be £500 better off in terms
15 of standard of living, how would you vote in a
16 referendum? Then we asked: and what would you do if you
17 would be £500 worse off?

18 To cut it short, if people thought they would be
19 £500 better off, something like 60 per cent said they
20 would vote in favour of independence and if they thought
21 they would be £500 worse off, only 20 per cent would
22 vote in favour of independence. That's slightly
23 tabloid-ish, but behind that there is a crucial point
24 which is if you do the multi-variate analysis -- one of
25 the things we have done is we have asked people in

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1 Scotland about a whole set of expectations about what
2 they think the consequences of independence would be,
3 essentially, of all the various possible material
4 expectations the material expectation that matters --
5 that is most closely correlated with current attitudes
6 towards independence -- are the expectations about the
7 economic consequences. Not the taxation consequences
8 narrowly, it's the wider economic consequences.

9 So yes, undoubtedly the degree to which Scotland, or
10 at least people in Scotland are in favour of greater
11 autonomy, to that extent at least is tied in with the
12 debates about economic consequences. That is a debate
13 still to be won and lost because essentially what we
14 also discover is that a third of people think Scotland
15 would be better off, a third of people think it would be
16 worse off and a third think -- they would be in the
17 middle. So it is a debate still to be won and lost.

18 PROFESSOR YVONNE GALLIGAN: Thank you very much.

19 SIR STEPHEN LAWS: Good morning. I think we have covered
20 a lot of the ground but I have a few questions left.
21 Your survey asks people if they want a rule restricting,
22 or in fact prohibiting, Scottish MPs from voting on
23 English matters. So the question is: do you want a
24 rule? It was suggested in our last evidence session
25 that what we needed was an inhibition rather than

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1 a prohibition. If we have an inhibition, it's only
2 going to work if politicians at Westminster think: if we
3 rely on non-English votes in order to get an English
4 question through, we will pay a penalty for it in the
5 English ballot box. Does your research indicate whether
6 that would be a justified fear in any respect?

7 RACHEL ORMSTON: My response to that would be it depends how
8 much -- how aware people are of that happening. So if
9 people are making a huge -- if opposition MPs or
10 whatever are pointing it out and it's getting a lot of
11 media coverage then possibly but --

12 JOHN CURTICE: If you could recreate the equivalent of the
13 narrative about the poll tax that was created in
14 Scotland, ie here is something that we did not want,
15 something we -- actually getting compliance by the
16 public with the law proves to be difficult, and you
17 argue that that is entirely the result of Scottish and
18 Welsh and Northern Irish MPs foisting it on England,
19 then yes, in those circumstances you may well imagine
20 that it would have an impact in the ballot box.

21 Whether that impact would necessarily be confined to
22 England I think is perhaps debatable, because the truth
23 is probably in those circumstances people in Scotland
24 and Wales might have decided that was not that good an
25 idea either.

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1 SIR STEPHEN LAWS: The other premise in your research is
2 that you can identify what an English question is. Does
3 your research indicate whether there's any understanding
4 that that may not be straightforward?

5 JOHN CURTICE: We have not.

6 RACHEL ORMSTON: We have not asked that or attempted to get
7 into that.

8 JOHN CURTICE: As I said in response to the Chair's first
9 question, this is a complicated issue that not even
10 politicians necessarily understand. But of course some
11 of the famous examples such as the second reading on top
12 up fees, actually part one of the bill was about the
13 creation of the Arts and Humanities Research Council,
14 which is an UK-wide body, absolutely. You will be
15 perfectly well aware -- you all know much more about
16 this than I do -- that the truth is that probably if we
17 were to go down this road it would require the way in
18 which legislation is currently written to be changed to
19 some degree in order for English legislation to be
20 distinguished. I'm aware of this.

21 I mean also, equally also it seems to me that while
22 we focus a great deal on the position in the House of
23 Commons I always find it slightly surprising that no one
24 mentions the House of Lords in this context. Why should
25 a peer who is resident in Scotland be able to vote on

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1 English laws? If we move to an elected House of Lords,
2 as the UK government may possibly, nervously, be moving
3 towards, the issue will certainly be replicated in the
4 upper chamber.

5 SIR STEPHEN LAWS: Again the answer is probably "No", but
6 does your research indicate whether there is any feeling
7 that there ought to be a UK veto for a UK interest that
8 is present even in relation to English matters.

9 JOHN CURTICE: No. But I would not be surprised if the
10 answer was: hang on, why should the Scots be able to
11 tell us what to do? That's my guess, absolutely.

12 SIR STEPHEN LAWS: I was asking about the difficulty of the
13 English question because of what you said about Barnett,
14 the Barnett consequentials and so on, because there is
15 quite a good logical case for saying there is no direct
16 causative connection between anything in most primary
17 legislation -- almost all primary legislation -- at
18 Westminster, and the Barnett formula.

19 If you suggest that the answer to that is then to go
20 on to having more tax raising powers in the devolved
21 areas, does that not only work if you also have a very
22 complicated system of intercepts, so you can identify
23 exactly which taxes go to which services? As long as
24 you have a system that puts all devolved services into
25 a bundle, and funds that with whatever comes from the

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1 centre, you are going to have this issue.

2 JOHN CURTICE: I am not sure I followed the last part of
3 your question. Let me deal with the first part first.
4 Let me play Devil's advocate here: while it may be true
5 that, strictly speaking, any piece of legislation does
6 not have an immediate financial consequence, one obvious
7 case is this -- if you put through legislation that
8 allows English universities to charge £9,000 fees, that
9 legislation is paving the way for decisions about
10 appropriations that do have implications for the ability
11 of the Scottish government to sustain its policy of
12 there being no tuition fees.

13 So, to that extent at least, it's difficult to argue
14 that the policy legislation doesn't matter -- in a sense
15 it's a clear case where the direction of public policy
16 in England was actually moving distinctly further away
17 from the position in Scotland and that as a result of
18 that, there were going, effectively to be consequentials
19 albeit not as a result of that legislation but
20 thereafter. It has had Barnett consequentials and the
21 way in which Scotland has solved it is essentially by
22 reducing funding for further education in order to
23 maintain funding for universities.

24 Equally for example, if in future a UK government
25 were to decide that there should be much more in the way

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1 of user charges for the National Health Service and that
2 therefore as a result the degree to which there's going
3 to be taxpayer funding for the National Health Service
4 was going to be reduced ... that's where those who would
5 argue that those outside of England have an interest,
6 given the existence the Barnett formula, in English
7 legislation would make their case. Because although --
8 yes, technically it happens through appropriations, the
9 policy framework will effectively shape the nature of
10 those appropriations.

11 I did not understand your second question.

12 SIR STEPHEN LAWS: Can I come back to the second point. The
13 case that can be put against what you have just said is
14 that, in fact, the decision to charge for fees is
15 a consequential of a prior decision to reduce the amount
16 of spending in England on expenditure and that if you do
17 not do it by reducing fees you might have to do it some
18 other way. So provided you move the reduction from
19 universities to something else within the devolved area
20 it has no consequence so far as Barnett is concerned.

21 That really is the explanation of my last point
22 which is that as long as you are creating a pot for all
23 devolved expenditure and saying: we will pass over
24 a block grant based on the whole thing, rather than
25 specifically piece by piece, you do not make transparent

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1 the fact that Scotland is paying for its services. That
2 the whole Barnett consequential argument is based on an
3 assumption that there is intercept, or you are
4 identifying which money goes to which places, which you
5 have not got.

6 JOHN CURTICE: I think my answer to you is that if I was
7 a mythical MP for Central Scotland I hear your argument,
8 but it's not what my constituents tell me. The point
9 is that insofar as governmental decision is incrementing
10 and as it were -- and I can see coming down very fast
11 down the tunnel of policy making, the consequence of
12 this decision to introduce English university fees, ie
13 there is going to be less money north of the border as
14 a result, I am going to say: hang on, that's actually
15 the crucial decision.

16 So I understand your logic and I do not disagree
17 with it, but I think politically, somebody in terms of
18 incremental decision making will say: hang on, if I and
19 my fellow colleagues in Scotland can vote down this
20 provision for introducing £9,000 top-up fees, we will be
21 protecting the interests of our constituents as we see
22 it. I think that's the way politically they would see
23 it.

24 SIR STEPHEN LAWS: The contrary argument would be that they
25 would not be, because the cut would just come in

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1 somewhere else.

2 JOHN CURTICE: It may be, but equally on the other hand if
3 we can defeat the government with respect to the
4 particular way in which it's wanting to reduce the
5 funding for universities, we may therefore, as a result,
6 force it to rethink. It would not be the first time
7 that, as a result of a failure to implement a particular
8 way of achieving something a government has decided to
9 give up on a particular goal. So I think politically
10 what I am -- I am not going to sit there and say I'll
11 vote for £9,000 fees because somewhere down the line
12 I can vote down the appropriations, I am going to take
13 every opportunity I can take politically in order to
14 defeat this change of policy.

15 SIR STEPHEN LAWS: It's not a question of voting for it,
16 it's a question of not thinking that it's my business to
17 vote for it.

18 JOHN CURTICE: I think this raises arguments about the
19 merits of the Barnett formula -- once you have societies
20 where you have policy diversions. That's the obvious
21 point because in a sense the Barnett system presumes, in
22 some way or another, that it is fair for changes in the
23 level of spending in Scotland to be influenced by what
24 is thought to be good for England. In a sense that
25 isn't commensurate with the logic of devolution.

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1 SIR STEPHEN LAWS: It would be quite impossible to move an
2 amendment to a bill to provide for university fees, to
3 say you can do what you like in England but it's not to
4 have any effect so far as funding in Scotland is
5 concerned. So it's not relevant to the bill for the
6 purposes of order but it is relevant - you say - for the
7 purposes of politics.

8 JOHN CURTICE: Absolutely.

9 SIR STEPHEN LAWS: Can I just ask one last question on the
10 Scottish opinion that you show in your survey, because
11 you say that the Scots are relatively relaxed about
12 Scottish MPs being not allowed to vote on English
13 matters. Have you any idea of how much that is
14 attributable to the logic of independence, which would
15 say Scottish MPs do not need to vote on English matters
16 because Scotland should be independent. And to what
17 extent a fix would encourage that thought rather than
18 not?

19 RACHEL ORMSTON: We have not looked at the two together, but
20 I think we would say is that there is no evidence from
21 our survey that support for independence has gone up
22 over the last decade. So I would not have thought it
23 would have much impact.

24 JOHN CURTICE: It's a long time since I have looked, but
25 undoubtedly my memory is that SNP supporters would be

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1 more likely to support this notion than other
2 supporters. But, as Rachel has just said, the evidence
3 of recent years is that the level of support for
4 independence in Scotland has proved remarkably resilient
5 to a whole variety of political developments, including
6 both the advent of a SNP government in 2007 and the
7 interventions of the UK government in January 2012.
8 Neither of which event can be demonstrated to have
9 increased the level of support for independence in
10 Scotland.

11 SIR STEPHEN LAWS: It just occurred to me, is your research
12 so far as English opinion is concerned -- does it break
13 down on a regional basis for England? You have done it
14 on a party basis.

15 RACHEL ORMSTON: We have not done it on a regional basis,
16 I suspect for some areas we could do it, but for other
17 years the numbers would be too small, to be honest.

18 JOHN CURTICE: If you wanted to ask us --

19 RACHEL ORMSTON: If particular questions were of regional
20 interest. Sometimes London stands out more than
21 anything else, from the other regions. Not actually
22 thinking of these questions particularly, but London
23 often has distinctive views relative to the rest of the
24 country.

25 JOHN CURTICE: We have kind of stopped looking at it because

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1 the policy agenda is dark, but there is no doubt that in
2 the years immediately after the introduction of
3 devolution in Scotland and Wales, and Charlie will know
4 this, that insofar as there was ever support in England
5 for regional assembles, that support was rather higher
6 in the northern parts of England and certainly in the
7 north east where the referendum was held. On the other
8 hand, that level of support was not sufficiently high
9 that when you asked people to pay extra council tax for
10 a body that was not going to be able to do anything, you
11 should not have been surprised that people voted no.

12 THE CHAIR: Thank you very much. We are very grateful to
13 you.

14 (11.54 am)

15 (PROFESSOR JOHN CURTICE and MS RACHEL ORMSTON withdraw)

16 (11.58 am)

17 Evidence from PROFESSOR JIM GALLAGHER

18 THE CHAIR: Professor Gallagher, thank you very much for
19 coming in. As I have said to the preceding witnesses,
20 there will be a transcript, it will be sent to you for
21 correction and then it will be put, as corrected, on the
22 Commission's website.

23 PROFESSOR JIM GALLAGHER: Fine.

24 THE CHAIR: Can I begin by diving in really at the
25 beginning. As your paper makes clear there were three

1 occasions when Conservative England was governed by a
2 non-Conservative UK administration. But the situation
3 was too unstable to last very long and did not. If
4 Scottish seats had been at their present level the
5 problem would never have arisen.

6 Should we therefore conclude that because the
7 problem arose when it did, English reaction is actually
8 conditioned by the fact of devolution, reinforced by
9 a bullish SNP government in Holyrood and not the fear
10 that they might get a government they had not voted for
11 making laws for the English? Is it reactive entirely?

12 PROFESSOR JIM GALLAGHER: I think it is not wholly reactive
13 but it's reactive to those things, and I think --
14 I think the views of the Conservative party -- this is
15 purely speculation I have no evidence -- I think the
16 views of the Conservative party in this were probably
17 formed in the crucible of the 1970s when the Labour
18 government, if you remember, was staggering on with
19 barely no majority at all, and latterly none to speak
20 of. Insofar as it had any support it was Scottish and
21 Welsh support, or that's how it seemed.

22 There was then of course the period of the 1979 to
23 1997 where, as it were, Scottish resentment bubbled
24 away. I think there may have been a degree of reaction
25 to that resentment in the period from 1997 onwards. The

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1 truth of the matter is that from 1997 onwards the Labour
2 government always had a comfortable majority in England,
3 as you well know.

4 The basic fact is that no government of the UK can
5 be stable and effective unless it has won England as
6 well.

7 THE CHAIR: That is a clear conclusion from --

8 PROFESSOR JIM GALLAGHER: That's a question of arithmetic.

9 THE CHAIR: Can I move on briefly to your comments on what
10 happens within the chamber of the House of Commons, or
11 what might happen to institutionalise the concept of
12 English Votes for English Laws.

13 One of the difficulties which I put to preceding
14 witnesses and which Sir Stephen's questions elucidated
15 further, is how on earth do you nail it down? How do
16 you either prohibit or inhibit governments from simply
17 saying, at a push, "we will abandon this system for this
18 bill. It's all so terribly important, we must get it
19 through and never mind where the majority comes from."

20 PROFESSOR JIM GALLAGHER: You cannot turn this into a piece
21 of black letter law, it's not that kind of thing. The
22 price that governments will pay if they break the rule,
23 the convention, the prohibition, inhibition -- whatever
24 word you wish to apply to it -- will be a political
25 price and it will be a political price in England in due

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1 course. How big that price is will depend on how
2 beastly they have been, on what issue they have behaved,
3 as it were, badly and how often they have done it.

4 I think the way to deal with it is to establish what
5 you might choose to call a convention, that that is how
6 one behaves. The example I would give for the success
7 of taking that approach is of course the Sewel
8 convention on not legislating on devolved matters.
9 There is no black letter law on that, there is no rule,
10 there is nothing to stop governments doing exactly what
11 you have said. That is to say: this is far too
12 important, we will just break the rule.

13 Remarkably since 1999, every government has, with
14 one accidental exception, followed the Sewel convention
15 to the letter. Even during the recent process, which
16 was highly contested, of the Scotland Act. So you
17 regard whatever rule one develops in relation to English
18 legislation, as of the same status as, and indeed in my
19 view as the mirror image of the Sewel convention.

20 THE CHAIR: Once you start sinning, it just gets easier
21 though.

22 PROFESSOR JIM GALLAGHER: Yes that's true, but once you
23 establish a period of virtuous conduct that reinforces
24 itself.

25 THE CHAIR: I see. Another difficulty then -- we have

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1 canvassed it before, and we will again I have no
2 doubt -- is the classification of the bills --

3 PROFESSOR JIM GALLAGHER: Yes.

4 THE CHAIR: -- which will determine their procedure.

5 PROFESSOR JIM GALLAGHER: Absolutely.

6 THE CHAIR: As you say, England and Wales bills are going to
7 be the hard cases because England and Wales are so
8 integrated in law and in practice, in justice and all
9 sorts of things, and there are cross-border problems
10 which are quite frequently encountered.

11 First of all, would a Wales only legal extent make
12 any difference? Because the First Minister of Wales is
13 very anxious to have one.

14 PROFESSOR JIM GALLAGHER: Yes. Wales is in a odd place in
15 that it has a political system and a legislature with no
16 legal system to sit underneath it and no legal
17 jurisdiction. I suppose it might make some difference
18 if there were such a thing, it's not obvious how and why
19 to create one -- I would not create a Welsh legal
20 jurisdiction to solve the West Lothian question, first.

21 One might argue that there ought to be a Welsh
22 polity which was similar to the Scottish one and
23 therefore had capacity over justice issues. If you did
24 that a separate Welsh jurisdiction would be caught in
25 the operational sense.

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1 However it seems to me the answer to this question
2 does not lie in the extent of clauses of acts of
3 parliament, it lies in the way the House of Commons
4 chooses to deal with the piece of legislation that's in
5 front of it. That is not a technical question but in
6 the end a political decision. The precedent for this,
7 it is well established, is when we referred in the
8 1970s -- and I've been in this system long enough to
9 remember doing this -- we would refer bills that were
10 Scottish to the Scottish Grand Committee for a second
11 reading, which Sir Malcolm Rifkind mentioned, and which
12 I mentioned in that paper I submitted to you.

13 That was not done on the basis of the technical
14 legal extent of the bill, but it was done on the
15 resolution of the house to treat this bill as if it
16 applied only to Scotland. That's what you do in these
17 circumstances. You make a practical, pragmatic decision
18 in respect of which jurisdiction the bill exists.

19 THE CHAIR: There was never any, in my recollection -- as
20 you say quite rightly, difficulty with the standing
21 order which did that.

22 PROFESSOR JIM GALLAGHER: Yes.

23 THE CHAIR: It still does include phrases which said: ignore
24 supplemental and incidental problems. But we may be
25 talking, when we are talking about England-only, or

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1 England and Wales-only bills, of a great deal more
2 weight in the bill, a great deal more concern that only
3 the English members should be able to vote on it. It
4 might not be quite so non-political a decision.

5 PROFESSOR JIM GALLAGHER: I think it would be a much more
6 political decision than it was in the 1970s because the
7 bills we were talking about then were always
8 non-controversial bills anyway. They were bills of deep
9 obscurity and it was therefore easy to run them through
10 this process.

11 Nevertheless I do not think it's undoable, and
12 I think there are two things one ought to worry about.
13 One is first of all the extent to which this might
14 condition the drafting of bills. So the using the bills
15 as a portmanteau - I have a bill, says the department,
16 what else can I throw in? - which Stephen will well
17 remember. That habit might be constrained a bit.

18 The second is to the extent that there are necessary
19 consequentials, not just a kind of schedule of the minor
20 consequentials, but operational consequentials. It
21 might be that those would be related to devolved matters
22 rather than reserved matters in relation to Wales, or
23 for that matter in relation to Scotland. If you run the
24 Sewel convention in parallel to this, you would make
25 that work perfectly sensibly.

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1 So let's say you have a bill dealing with, for the
2 sake of argument, English schooling, which is a classic
3 England-only matter in the world which we now operate,
4 but that it has some consequence for Welsh schooling.
5 I cannot imagine what it is at the moment, but let's say
6 that one simply negotiates with the Welsh Assembly, with
7 the Welsh Assembly government saying they are quite
8 happy for that particular consequential to happen and
9 it's dually signified by the Welsh Assembly that there
10 is no reason at all why the English members should not
11 then regard this as an England-only bill, it's entirely
12 workable.

13 THE CHAIR: From the Welsh point of view that would mean
14 perhaps that English members would vote on Welsh
15 schooling.

16 PROFESSOR JIM GALLAGHER: By agreement, that's what the
17 Sewel Convention allows for.

18 THE CHAIR: In the same area of certification and decisions
19 on the proper extent and the proper procedure applicable
20 to bills, you are concerned about politicising the role
21 of the Speaker. But the Speaker would not need to be
22 impartial if he was not politicised anyway, if he was
23 not dealing in politics. Every time that the Speaker
24 grants an urgent question, the minister is probably
25 cross but the Speaker does it. Every time some

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1 beautifully hand crafted and perfectly finished
2 amendment, completely in order, is not selected, the
3 Speaker is doing something political.

4 Some of these amendments can be highly political.
5 I remember during the Maastricht Treaty bill, a lot of
6 amendments were turned down in an attempt to find the
7 magic key which would open up the social charter.

8 So if the Speaker is quite used to politics, why can
9 we not use him?

10 PROFESSOR JIM GALLAGHER: I think that the risk that you can
11 is not -- of course the Speaker's office mixes in
12 politics of the time. You will remember much better
13 than I that, on the whole, he will seek to be balanced,
14 he will not favour one side against another over time;
15 he will have to make an individual decision.

16 The difficulty with determining a procedure for
17 bills which might well determine their content and could
18 even determine whether they are passed, is that that's
19 pretty irreversible for that bill. It's binary, you
20 either win it or do not, and I think that's pushing the
21 Speaker into places that are rather too far for him to
22 be in.

23 THE CHAIR: If you give the decision, or the confirming
24 decision to the house, in would go the whips and out
25 would go rational impartiality.

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1 PROFESSOR JIM GALLAGHER: That's fairly unkind to the whips.

2 I think there are two consequences following from it.

3 One is we have to establish a routine and a convention
4 under which the whips would learn to operate over time.

5 I recall we made the Sewel Convention in that context as
6 well, and I think probably -- let me start that line of
7 argument again.

8 I think the routine of establishing that there is
9 a bill which is in this territory which is normally
10 dealt with in this way -- it is normally dealt with in a
11 all English way, that will be quite hard to establish at
12 first. But then an argument for not doing something of
13 we have never done it before, is not a great argument.

14 I think it's probably a routine that could be
15 established and ministers will pay a political penalty
16 in due course if they choose to override it.

17 Of course the whips will have a go and of course the
18 government will have quite a lot of influence over that.

19 I think the other consequence that follows from it is
20 that therefore the power in the procedure which the
21 English members have should be a relatively strong one.

22 If the government -- the government has lots of power in
23 The Commons, particularly it has the power to decide
24 what to legislate on at all. And if it wants to produce
25 a bill which is plausibly UK, which has some effects on

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1 England that are politically desirable but might be
2 unwelcome, it can do that; it has the power of
3 initiative. It also has the power of reference, it
4 seems to me the converse of that is that the English
5 procedure ought to be quite a powerful one. I argue
6 that in the paper I have given you.

7 THE CHAIR: One of the stages which you do not mention, and
8 to be frank it is not often mentioned in this context,
9 is Lords amendments.

10 PROFESSOR JIM GALLAGHER: I think I do mention it in the
11 paper and I think those should be dealt with in the
12 present way.

13 THE CHAIR: You would not think of committing them? You
14 could commit Lords amendments to an English-only
15 committee reporting to the House.

16 PROFESSOR JIM GALLAGHER: Yes it could, although we want to
17 get the bill through eventually. There's a limit to the
18 number of iterations to the process here. Let's be
19 realistic about this: the vast majority of the Lords
20 amendments are really tedious government amendments
21 catching up on things that have gone wrong. If there
22 were a very major shift in a bill in the Lords, which is
23 conceivable I guess, even though it's had a second
24 reading --

25 THE CHAIR: I can tell you, the Copyright Bill of about

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1 15 years ago was rewritten.

2 PROFESSOR JIM GALLAGHER: Okay, that might not be all that
3 relevant in this context but it's conceivable that one
4 would be -- then parliament is sufficiently flexible to
5 say in these circumstances we want another look at this.

6 THE CHAIR: Thank you.

7 SIR STEPHEN LAWS: Professor Gallagher, good morning. You
8 draw the analogy with the Sewel Convention and that --
9 the equivalent would be a principle that the government
10 would not legislate against the wishes of the majority
11 of English MPs, usually, or normally.

12 PROFESSOR JIM GALLAGHER: Yes.

13 SIR STEPHEN LAWS: There would be an exception for the
14 unusual non-normal case. Do you have any views on when
15 that exception might be relevant? We do not have any
16 examples for the Sewel Convention.

17 PROFESSOR JIM GALLAGHER: I think the answer Stephen is that
18 I would regard the unusual as very unusual. Let us
19 start with the Sewel Convention and see what follows
20 from it. I think we start by assuming, at least I start
21 by assuming with the Sewel Convention that the word
22 normally -- I know why it was put in there, it was put
23 in because that was the politics of the time. But one
24 can imagine a world in which let's say the
25 Scottish Parliament has lost all credibility and the

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1 people dislike it; it is ill regarded, it's disastrous
2 and corrupt or some such and Westminster, by contrast is
3 riding high in the public estimation.

4 All those things, then one might say: the normal
5 world has changed and let's say a reform of Holyrood is
6 required, but a corrupt Holyrood refuses. We are in the
7 land almost of fantasy. What's the mirror image of
8 that? The mirror image is not quite the same because
9 the two conventions will not be the same, because in
10 practice the government has so many ways round even the
11 best system that one can devise at Westminster that it's
12 hard to imagine that they should be allowed, in anything
13 other than extremely unusual circumstances, not to
14 follow it. If they do they will pay the political
15 penalty. It's not black letter law this stuff, it's
16 political process.

17 SIR STEPHEN LAWS: The mirror image of the Sewel convention
18 would be in practice that we would have full strength
19 English Votes for English Laws because the English votes
20 would always prevail.

21 PROFESSOR JIM GALLAGHER: Yes. It's a kind of distorting
22 mirror if you like. To understand why that's the case
23 I think one really has to sit quite far back from
24 parliamentary procedure and that's why you are doing
25 this thing. You are doing it because we are in an union

1 which contains small nations, each of which now have
2 a degree, substantial degree, of political autonomy as
3 well as administrative autonomy. The Sewel Convention
4 recognises that in Westminster.

5 The relationship however is entirely lop-sided,
6 Westminster is still England's parliament as it is the
7 United Kingdom's parliament. I think that the idea of
8 an English parliament, or to put it more absurdly, an
9 English parliament within Westminster is not
10 a sustainable one. Therefore the procedure that's
11 needed in Westminster cannot be the absolute mirror
12 image of devolution in Scotland and Wales. What it is,
13 is something which gives recognition to English voice in
14 the process of legislation, to acknowledge the fact that
15 English opinion might in some circumstances be different
16 from the balance of UK opinion. So the complete mirror
17 image does not work, the mirror imaging is merely in the
18 use of a convention to establish the way in which
19 English voices get heard in Westminster.

20 SIR STEPHEN LAWS: The reason it cannot be a mirror image is
21 because England is so much larger --

22 PROFESSOR JIM GALLAGHER: It's 85 per cent of the total.
23 This would be terribly simple if we were a federal
24 country with four or five units of roughly the same
25 size, but we are not. We are not a federal system, we

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1 are a system which is a series of different rather
2 lop-sided unions, three relationships which are
3 different, and each of those relationships is of a wee
4 thing with a big thing. If we were to pretend the big
5 thing, England, was the same as the small countries we
6 would undoubtedly be on the road to separating them out
7 completely in my view.

8 SIR STEPHEN LAWS: Which is where I am going, because that
9 implies that "not normally" must mean something
10 different in the proposed convention from what it will
11 mean in the Sewel -- the legislative consent motion --
12 convention for the other three jurisdictions.

13 PROFESSOR JIM GALLAGHER: I have not drafted the wording of
14 this convention and I have not concluded whether or not
15 "normally" is in it or not. But the fact of the matter
16 is that given that governments have a majority in
17 Westminster, and as the chairman said, can in the end
18 ram through a vote, then that's the nature of the beast,
19 even if it's not the wording of the beast. But it would
20 be very unwise to do that.

21 SIR STEPHEN LAWS: The sanction would be the political price
22 and that implies that whatever fix we come up with has
23 to be one that secures transparency so far as whether or
24 not English votes are being overruled.

25 PROFESSOR JIM GALLAGHER: Yes.

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1 SIR STEPHEN LAWS: Would it be fair to say that would be the
2 most important point?

3 PROFESSOR JIM GALLAGHER: Absolutely. There has to be
4 a point at which the UK majority says to the English
5 majority: no, do not agree with you. In the process
6 I describe, that is possible -- well, it is possible in
7 that the government can refuse to have a bill at all,
8 the English have amended.

9 I think that -- in a sense of course, that's not
10 ramming it down their throats. If they were to say at
11 third reading -- the process -- sorry easier to start
12 with process: I think the best process is probably the
13 one in which the whole House gives a second reading, we
14 have an English-only committee, we have a report stage
15 at an English Grand Committee, not on the floor of the
16 House, and no amendments at third reading on the floor
17 of the House. The option the government has at third
18 reading therefore is to accept the bill as amended, in
19 other words to adhere to English opinion, or to have no
20 bill at all. That's a relatively powerful sanction.

21 The alternative, which I think is equally arguable,
22 is a second reading at English Grand Committee, where
23 the government has to negotiate with English opinion to
24 get its bill through.

25 SIR STEPHEN LAWS: Can I suggest two potential disadvantages

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1 to that? The first is that that system gives no
2 opportunity to the government, except in the House of
3 Lords, to negotiate a compromise on the detail that
4 would bring over enough English votes to get a majority
5 for the bill.

6 The second disadvantage is that it suggests that the
7 guardianship of the UK interest would be with the House
8 of Lords - because it would then be for the House of
9 Lords to come back and say, with perhaps added
10 legitimacy: this bill must be amended because it has
11 implications for the UK. Because the UK interest is
12 where all the pressure, in the case of the definition of
13 what an English matter is - it's where the Barnett
14 formula consequentialists come in and all the other
15 things - you may want to say something about the Barnett
16 consequentialists.

17 PROFESSOR JIM GALLAGHER: I'll come onto them in a minute.

18 SIR STEPHEN LAWS: That's where they come in, when you are
19 looking at any UK veto.

20 PROFESSOR JIM GALLAGHER: You are right in that the way we
21 run parliamentary processes at the moment is we take the
22 issue up to -- whatever stage it is, a deal has to be
23 done, you either do or do not do the deal. On my view
24 of the world that would be, if you follow the Rifkind
25 model, either before second reading: what deal will you

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1 do to get a second reading? Which is may be a bit
2 premature, or in this English committee or English
3 report.

4 So let's imagine that unwelcome things to the
5 government have been added to a bill during the
6 English-only committee and it then proceeds to the
7 report stage, which of course will contain large numbers
8 of government members and the minister. The line that
9 the minister will have to take is: unless you accept my
10 change to this amendment, unless we can do a deal on
11 this, we will vote this down at third reading.

12 That's quite an interesting place for the government
13 to be because it gives it a lot of power to the English
14 members, I think that's appropriate in this
15 circumstance, but it does not give them complete power.
16 I think the negotiation does not then happen at a third
17 reading amendment, it happens at report stage. That's
18 the place where it goes.

19 SIR STEPHEN LAWS: It has entirely different consequences
20 depending on whether the government has lost its English
21 majority because it has had rebellions on its own side,
22 or whether it's lost its English majority because the
23 opposition are more and want to cause trouble for the
24 government.

25 PROFESSOR JIM GALLAGHER: Yes, but such is politics.

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1 SIR STEPHEN LAWS: One last question, which relates to the
2 problem of definition: would it be possible, do you
3 envisage, to resolve a lot of those problems if you
4 looked at the matter retrospectively? So you waited
5 until the government had forced through a proposition
6 relying on non-English votes, and then allowed English
7 members to insist on the matter being rerun in order to
8 see what the English opinion was?

9 PROFESSOR JIM GALLAGHER: In the paper I gave you, I said
10 that there was really a choice between having an
11 alternative stage and an additional stage. It seems to
12 me you have produced a proposition that has both an
13 alternative stage and an additional stage and I do not
14 really see any advantage in that. The critical thing is
15 there has to be a place where the government either
16 acknowledges English opinion or refuses to do so and
17 then will play the political price for doing so.

18 SIR STEPHEN LAWS: The advantage would be that it would
19 provide the transparency, in that before the government
20 eventually overruled English opinion, it would have
21 rerun it with people knowing in advance what the English
22 opinion was. So the government would win on a UK
23 majority. The English would say well ask us what we
24 think separately rather than working it out backwards
25 from the way people voted. Then if the English again

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1 defeat the government position, the Government are in
2 a position transparently to overrule it.

3 PROFESSOR JIM GALLAGHER: No, I do not like that. I think
4 I prefer a proposition in which English opinion is
5 expressed at committee, is confirmed or not at report
6 because the report stage, with all English members, does
7 represent English opinion, which the particular
8 committee might not. Then the government has to decide
9 whether to accept that or not.

10 I think that's quite a powerful device because it's
11 not a question -- when they get to that stage they
12 cannot negotiate away, it's drop dead. I think that
13 gives English members a lot of leverage and I think they
14 need to have a lot of leverage because on the other side
15 of the table -- there's a table in that paper which says
16 who has the power where and the government has lots and
17 lots of power; it has the power of initiative, it has
18 the second reading, it can design the structure of the
19 bill and so on and so forth. So I think you are going
20 to give English members a choke if you like.

21 SIR STEPHEN LAWS: That puts a lot more weight on the
22 question of what an English bill is.

23 PROFESSOR JIM GALLAGHER: Yes, but on my view of the world
24 the government has made that choice at the beginning.
25 The House has made that choice at the beginning by

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1 announcing we reckon this one fits into the procedure,
2 or we reckon it does not.

3 PROFESSOR YVONNE GALLIGAN: Thank you Jim, your paper was
4 very interesting.

5 PROFESSOR JIM GALLAGHER: Sorry it was so long.

6 PROFESSOR YVONNE GALLIGAN: Well it certainly was very
7 comprehensive. You managed to cover the issues.

8 I would like to pick up on this point of what the
9 chairman and Sir Stephen raised, in relation to who
10 determined whether a bill is an English-only bill. It
11 seems that there is an emerging debate here as to
12 whether it should be the Speaker or it should be the
13 House. There's a lot of meat in this particular
14 question. One of the concerns is around the role of the
15 Speaker and the politicisation or the extended
16 politicisation of the Speaker, we have had this
17 discussion already, versus the House.

18 What however, if there was some way in which it
19 wasn't just the Speaker as a Speaker that made the
20 determination; if the Speaker were advised in some way.
21 If there was some way of -- the Speaker would make the
22 final decision, but nonetheless would carefully listen
23 to words of wisdom from various quarters. How would you
24 react to a proposition of that kind?

25 PROFESSOR JIM GALLAGHER: This is not a job interview,

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1 right. One of the striking things we have seen in this
2 country over the last 20 or 30 years is attempts, some
3 successful and some not, to depoliticise issues. So we
4 have depoliticised interest rates, we have judicialised
5 all sorts of stuff. This is the meat of the political
6 process, you cannot depoliticise that.

7 You would get -- I can imagine a world in which you
8 get the Speaker's panel of learned chaps, retired
9 parliamentary counsel and such like, and their opinions
10 would be canvassed and people would be looking at them
11 as they now look at the US Supreme Court judges: what
12 side of the argument is Sir Stephen likely to be, what
13 side of the argument is your chairman likely to be on?

14 I do not find that an attractive proposition at all.
15 These are, in the end, political questions which will be
16 influenced by technical argument; there's a political
17 choice that has to be made.

18 PROFESSOR YVONNE GALLIGAN: Can I push a little bit on that
19 and suggest that maybe instead of a single Speaker, that
20 the House could have a Speaker and a couple of deputy
21 speakers. Maybe once the determination is made, that in
22 fact one of the deputy speakers would be the person
23 tasked to carry this piece of legislation through.

24 PROFESSOR JIM GALLAGHER: I do not see how that helps at
25 all. Let's imagine first of all you must not have four

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1 because they might split two and two, so let's imagine
2 you have three. Either all three agree or it is
3 a majority of two to one; are you saying it should be
4 the loser who should be required to explain the
5 decision? I cannot see any -- perhaps I am missing the
6 point Yvonne, but I cannot see any sense in that at all.

7 PROFESSOR YVONNE GALLIGAN: What I was in fact more thinking
8 about, and again this is a little bit of blue sky
9 thinking on my part, is that the Speaker would -- that
10 there would be a Speaker for perhaps each of the
11 devolved parliaments as well as the Speaker. So you
12 would have let's say a deputy Speaker -- an associate
13 Speaker, for Northern Ireland, for Scotland and for
14 Wales.

15 PROFESSOR JIM GALLAGHER: Who was a member of the House or
16 not?

17 PROFESSOR YVONNE GALLIGAN: Who was a member of the House.

18 PROFESSOR JIM GALLAGHER: How could a member of the House of
19 Commons be a Speaker for a devolved parliament?

20 PROFESSOR YVONNE GALLIGAN: No they would not be the Speaker
21 for the devolved parliament but they would be the person
22 in the parliament, in the House of Commons, that would
23 be responsible for seeing through legislation, or for
24 maybe determining -- for taking the initiative on this
25 kind of legislation.

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1 PROFESSOR JIM GALLAGHER: I am struggling here because I do
2 not actually think speakers do take the initiative, they
3 preside.

4 PROFESSOR YVONNE GALLIGAN: Yes, for presiding.

5 PROFESSOR JIM GALLAGHER: The -- in a sense what might lie
6 behind your question is the notion that maybe the House
7 of Commons itself should be territorialised. Of course
8 we have a Scottish Grand Committee, at least in notion,
9 I think we can easily have an English and Welsh Grand
10 Committee; the Welsh one probably exists --

11 THE CHAIR: There is a Northern Ireland Grand Committee.

12 PROFESSOR JIM GALLAGHER: -- and there will be a chairman of
13 each of those committees. You could say such people
14 already exist, but I do not see how that makes the
15 question of deciding whether to apply an English-only
16 procedure to a particular bill any easier or more
17 difficult.

18 PROFESSOR YVONNE GALLIGAN: Fair enough, I just thought
19 I would run these ideas by you to get some clarification
20 on them.

21 The other question I wanted to ask you was in
22 relation to how you would approach an additional process
23 as part of -- a more strengthened consultation process
24 before the introduction of a bill.

25 PROFESSOR JIM GALLAGHER: What's striking to me when I look

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1 at the legislative process in Westminster now, compared
2 to how it was in the 1970s when I first started playing
3 in it, is that it's much more extended now. In
4 particular the process of publishing draft bills and
5 giving them a kicking around, a parliamentary process
6 has been established.

7 That has a lot of strengths in terms of the quality
8 of legislation, it does not always work in terms of the
9 length of a political cycle because it takes so long,
10 but as a general proposition, other things being equal,
11 and I think pre-legislative scrutiny is a good thing.
12 It has the advantage of improving the technical quality
13 of legislation so it ought to require fewer amendments
14 at actual parliamentary stages and it might have the
15 advantage of flushing out some of these territorial
16 issues, I do not see any difficulty in that.

17 In some ways of course it's easier to be running
18 slightly off piste kind of processes at
19 a pre-legislative stage where it does not wholly matter,
20 and the idea that, say, a bill that was England-only had
21 a pre-legislative scrutiny process in an English Grand
22 Committee seems to me to be perfectly fine and might
23 well provide an opportunity to test out whether there
24 were any problems with it, or to make any necessary
25 compromises, so in the end it went through very

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1 smoothly. But it would not be, in my view, a substitute
2 for actual power for English members in a real
3 legislative process. At most it would be an addition
4 which might make that run more smoothly.

5 PROFESSOR YVONNE GALLIGAN: Yes, it was in the context of it
6 being an addition rather than a substitute that was in
7 my mind.

8 PROFESSOR JIM GALLAGHER: Two possibilities. One is you
9 might say well, that could be an aspect of
10 pre-legislative scrutiny which could be used today of
11 course and might be used, as it were, at the initiative
12 of government. Or you could, though I think this is
13 more difficult, conclude that it was a mandatory piece
14 of pre-legislative process for a bill which was thought
15 to apply to England-only or England and Wales-only.

16 The difficulty with that is a timing one. As
17 Stephen knows, the legislative process is absurdly drawn
18 out, from policy to implementation. A mandatory
19 additional stage might be challenging, for purely
20 practical reasons.

21 PROFESSOR YVONNE GALLIGAN: Thank you.

22 PROFESSOR CHARLIE JEFFERY: Thank you. Jim, I have much
23 enjoyed the paper. Gladstone said it was beyond the wit
24 of man to come up with something like this, so
25 congratulations.

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1 PROFESSOR JIM GALLAGHER: Absolutely, yes, that tells me
2 something.

3 PROFESSOR CHARLIE JEFFERY: I wonder if there's a conceptual
4 distinction to be made between posing the West Lothian
5 question and posing the English question. It strikes me
6 if it's the West Lothian question it's a reaction to
7 something that the Scots have, and therefore there must
8 be something that happens for England because of that.

9 Then the English question, which is more a positive
10 case for a distinctive governing arrangement for
11 England, which is, in a sense, not directly attached to
12 whatever happens in Scotland. I thought you were making
13 the latter case in this paper, that there should be
14 a distinctive governing arrangement for England, for
15 other reasons than simply responding to Scottish issues.
16 Am I right?

17 PROFESSOR JIM GALLAGHER: That's probably a reasonable way
18 of expressing my view, but let me tell you what it
19 is: it seems to me that it's possible to regard the
20 West Lothian question simply as a hygiene factor.
21 That's to say most people when asked say: that cannot be
22 right. They say that, as your previous witness said,
23 for reasons of logic rather than anything else: how it
24 be it someone who is elected for one place, makes the
25 laws for another? That does not make sense.

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1 If there's something one can do to say: yes, you are
2 right and there's a way of dealing with that, what your
3 chairman called the parliamentary fix, though that's
4 a wee bit unkind to an approved procedure for better
5 democracy or some such thing. That seems to me to be
6 a necessary part of thinking about, not so much the
7 governance of England but the governance of the whole
8 UK, which includes an appropriate governance for
9 England.

10 But as I was saying to Stephen, the challenge of
11 getting an appropriate governance for England inside
12 a wider union, is that England is so dominant, both
13 economically and politically and numerically, inside
14 that union. Therefore, a straightforward, as it were,
15 logical answer of an English parliament and a formal --
16 fully formal and federal UK does not seem to me to be
17 a stable answer. Nor is it particularly an answer that
18 seems to be demanded in England, to be fair.

19 That leaves you with a set of difficulties. The
20 first is how you manage the parliamentary problem, the
21 fact that Westminster is England's parliament and the
22 UK's parliament and you have these, as it were, Celtic
23 MPs wandering about in it. Can you simply ignore that?
24 I do not think you can and therefore I think you should
25 do something along the lines I have suggested in this

1 paper.

2 The second thing relates to the governance of
3 England itself. I think what strikes me there is that
4 England remains the most remarkably centralised country.
5 There are lots of numbers that one could quote, but the
6 one which is really, really striking is that only
7 4 per cent of the taxation in the UK is decentralised
8 and half of that isn't really, because of the business
9 rates and because the council tax is now frozen.

10 So take that, take fiscal power as the example,
11 inside England there is only one fiscal power, and that
12 is the Treasury. Similarly take representative
13 political power and the only seriously functioning piece
14 of decentralised representation in England is Boris. In
15 the end I do not think that's a good thing for England,
16 but that's a decision for the English. I think you
17 probably need to find a way of, as I say, hygiene at the
18 Westminster level, but genuine decentralisation at the
19 sub-England level.

20 The answer to that is not the standard regions,
21 which are an administrative accident, which are now
22 ceasing even to be that, but probably in some form of,
23 as it were, local government plus. I do not see why
24 Kent, which is bigger than some small countries, should
25 not have a degree of political power greater than it

1 currently has. I do not see why areas around Manchester
2 or Liverpool shouldn't combine to form themselves into
3 some kind of sub-regional identity.

4 To be fair to the present government, they are
5 conceptually attracted to this and the localism bill,
6 which is an Act now -- suggests some mechanisms for
7 doing it. Are they adequate in my view? No they are
8 not, but it took a very long time for the governance of
9 Scotland to crystallise into its present form, and it
10 has taken even longer for the governance of Wales to
11 crystallise, we have seen it change over the last ten
12 years. I do not see why -- well it is obvious that
13 changes to the governance of England, the internal
14 governance of England will take longer still.

15 PROFESSOR CHARLIE JEFFERY: You are probably taking us
16 a touch beyond the remit.

17 PROFESSOR JIM GALLAGHER: I noticed you are not people
18 confined to your remit in the earlier evidence.

19 PROFESSOR CHARLIE JEFFERY: So we will go and reform English
20 local government. There we are, thank you.

21 PROFESSOR JIM GALLAGHER: You did ask.

22 PROFESSOR CHARLIE JEFFERY: At some stage in your report,
23 you say that any parliamentary fix or improvement to
24 democratic procedure needs to command cross party
25 support.

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1 PROFESSOR JIM GALLAGHER: Yes.

2 PROFESSOR CHARLIE JEFFERY: What we are essentially talking
3 about here is a situation in which -- the only likely
4 scenarios are a situation in which a Labour-led UK
5 government would have a UK majority and a Conservative
6 majority might exist in England.

7 PROFESSOR JIM GALLAGHER: Yes.

8 PROFESSOR CHARLIE JEFFERY: Why on earth would Labour ever
9 support anything like this in those circumstances, when
10 it would be a potential circumscription of its own
11 future power?

12 PROFESSOR JIM GALLAGHER: I think there are two or three
13 reasons why they should. Because a Labour party which
14 sought to govern the UK on the basis of a bare majority
15 of Scottish and Welsh MPs would be planning to fail,
16 because that's not a sustainable position.

17 As I say in the paper, this only ever happens when
18 England is split down the middle. The fact of the
19 matter is -- you are the political scientist Charlie,
20 much better than I am -- if the Labour party wishes to
21 win a majority in the UK it has to win England and it
22 has to position itself, in the jargon, to meet the
23 median English voters' wishes. And a strategy under
24 which it says: I am not going to do that, but I hope the
25 Scots and Welsh will get me through the gates, is a daft

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1 strategy.

2 The second reason why a left of centre party, or a
3 Labour party, should support this is that most of these
4 problems are mythology. As the chairman said at the
5 beginning, England is very seldom split directly down
6 the middle, and it's very seldom the Scots and Welsh do
7 actually make a difference. It's even less likely now
8 that we have -- that we are going to have -- equalised
9 constituency sizes; you have seen the arithmetic in the
10 paper. None of the occasions in which a UK government
11 was supported barely by the Celts would have had
12 happened if the number of Celts had been where the Scots
13 now are and the Welsh will be.

14 So from the point of view of the Labour party, they
15 are not actually giving up anything and they are
16 certainly not giving up anything that's worth having.
17 What they would be gaining in return is the legitimacy
18 of the union state across the UK. There's a fear I have
19 at the bottom of all this, that the sense of logic and
20 unfairness, which can be fed by the West Lothian
21 question, turns into a genuine resentment. Despite your
22 earlier witness' views, I think there's a higher risk of
23 that than you might think. And that if your objective
24 is the maintenance of the union, as all the all the
25 mainstream political parties say is an objective, then

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1 you have to deal with this and you have to fix the roof
2 while the sun is still shining. Wrong analogy today.
3 That's in Labour's interest, and it is part of their
4 policy agenda.

5 PROFESSOR CHARLIE JEFFERY: To tone that up a bit, and
6 I think you say something like this later in the report,
7 the stability of the UK state is potentially at risk if
8 there is no attempt to fix this anomaly.

9 PROFESSOR JIM GALLAGHER: Yes. I think that is right in the
10 long run. I do not wake up in the middle of the night
11 sweating, thinking if this Commission does not get it
12 right, we are all doomed. But I do think that the UK as
13 a union has to be seen as legitimate in all parts of the
14 union. There was and is an issue about whether the
15 Scots think it is desirable and legitimate; partly, and
16 perhaps wholly, addressed by devolution. Ditto the
17 Welsh and of course it is an entirely different story
18 from a Belfast perspective.

19 If however the English were to say the union is
20 illegitimate, then it would certainly be under threat,
21 of course, manifestly. I think, from the point of view
22 of the maintenance of it, ensuring that this irritant is
23 addressed is a very sensible thing to do. I have always
24 thought that something should be done about it.

25 There are many other irritants which you might want

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1 to come onto, but certainly this particular one is, at
2 the moment, rather in the space of anoraks; there are
3 not terribly many people who really understand it. It
4 could become a rather more burning political question,
5 who knows where three party electoral systems might lead
6 us? And who knows whether we might find ourselves
7 having all sorts of odd arithmetical combinations which
8 made what's been a mythological and theoretical problem
9 into a real one. That affects it in my view.

10 PROFESSOR CHARLIE JEFFERY: One last thing, and it's about
11 Barnett; we are going to have a bit of a Barnett
12 afternoon so I do not want to dwell too much on the
13 causality question which you raised as part of your red
14 herring, but the other part I do. That is that Barnett
15 is a red herring because it has no institutionalisation,
16 it has no force, it could be changed to something else
17 tomorrow.

18 I heard you make that point in response to a Speaker
19 at a different event recently. The Speaker was somewhat
20 dismissive of that point, basically suggesting that the
21 fact that Barnett is not institutionalised is exactly
22 the problem, because it gives enormous power to the
23 Treasury; that power is something the Treasury is very,
24 very unlikely to want to give up. So it's this kind of
25 grey area shrouded in mystery within the Treasury which

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1 is really the problem. You didn't have an opportunity
2 to respond and I wanted to give it to you.

3 PROFESSOR JIM GALLAGHER: That's very kind of you to offer
4 it to me. His answer was of course amusing but
5 irrelevant. The fact is it is not institutionalised, it
6 has no legal form, it could in principle be changed on
7 a whim tomorrow. If George Osborne wakes up with
8 an ache in his head, he might say tomorrow, "I am going
9 to amend the Barnett formula because it is far too
10 generous", and in the end the devolved administrations
11 would have no recourse, that's all that would lead to
12 it. I do not think he is going to do that, as it
13 happens.

14 The fact that it is part of the enormous power of
15 the Treasury just demonstrates that the Treasury could
16 change their mind and they could have a different
17 system. Then, as it were, building your constitutional
18 arrangement on what the Treasury has traditionally done
19 is daft, and that's the institutionalism point.

20 There's another argument about institutionalising
21 Barnett, which is that, however, the Treasury does
22 a terribly bad thing. This is of course the Welsh
23 argument, the Treasury do a bad thing because they are
24 always mean to us, is the general line, and there is
25 some truth in it. But Gerry Holtham's argument, for it

1 was he, was that the power of the Treasury should be
2 curtailed by institutionalising Barnett; as it happens,
3 I do not think that's going to happen.

4 I do think, just to deal with this Barnett question,
5 it is a red herring for the institutional reason,
6 because it is potentially evanescent -- it was
7 a temporary measure in 1978. Secondly, I think the
8 point that it has a wholly indirect effect on
9 spending -- that legislation is -- is actually
10 unanswerable, despite a valiant attempt by John Curtice
11 to answer it earlier.

12 The fact is that governments make their fiscal
13 plans, and inside those fiscal plans the main choice you
14 have to make that's relevant to us in this conversation
15 is how much to spend on reserved matters and how much to
16 spend on devolved matters. The way they decide what to
17 spend on devolved matters as a whole: health, education
18 versus defence and social security -- and what they then
19 do, using the Barnett formula in effect, is to split out
20 the money they are spending on devolved matters between
21 English devolved matters and Scottish, Welsh and
22 Northern Irish devolved matters.

23 Barnett, as it happens, is a good way of doing that,
24 in the arithmetical sense, because it links the two. It
25 is a function that that formula discharges that any

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1 system in place that would have to discharge, the only
2 body in the UK that can choose between whether to spend
3 on defence and hospitals is the UK government.

4 Whatever system we have that determines the fiscal
5 transfers inside the UK has to take account of that
6 fact. Barnett manages that, more by luck than judgment,
7 but it does achieve it. Whether it's of course linked,
8 as you heard in evidence earlier, to that other big
9 English resentment ... There are two English
10 resentments of the Scots. One is that they come down
11 here and make our laws, and that's the resentment you
12 are dealing with. The other is they come down here and
13 take all our money. The latter is actually more
14 difficult to deal with because real interests are at
15 stake. This one you are dealing with is entirely
16 fixable.

17 THE CHAIR: Can I just suggest this, prompted by Yvonne's
18 blue sky thinking. We have a series of, as it were,
19 satellite legislatures and the main legislature and we
20 try to divide space between them. They do not seem,
21 these legislatures, to have much to do with each other.

22 When the House of Commons is going through
23 a programme bill, it really does not know always -- or
24 if it knows it does not pay much attention -- to the
25 fact this bill will have Barnett consequentials, or it

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1 might; perhaps you could not put a figure on -- what
2 they are.

3 No one has argued that there should be more draft
4 bills, but that's quite a good time at which the
5 devolved legislatures could put their tuppence in. I do
6 not know whether these are good ideas, it just seems to
7 me there is a lacuna between the centre and the
8 satellites which there might be ways of filling, ways
9 which respected the fact these are under different
10 political managements but also respected the fact they
11 were making law for the citizens of this country and
12 they should do it in as efficient and agreed way as they
13 can.

14 PROFESSOR JIM GALLAGHER: Yes. I think there's a lot in
15 what you say, although I do not think it's principally
16 to do with Barnett. What's very striking about the UK
17 is that, as you say, we have legislatures and
18 parliaments but very weak interparliamentary relations.

19 THE CHAIR: Exactly.

20 PROFESSOR JIM GALLAGHER: The Calman Commission wrote
21 extensively on this, on intergovernmental relations, and
22 their point was that this was an undeveloped part of
23 our constitution. I think that is right. That applies
24 both to government to government relations and
25 parliament to parliament relations.

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1 If one looks at the legislative process, there are
2 a couple of bits of intergovernmental relations that
3 work very well, and one of them is the legislative
4 process, oddly enough, and precisely intergovernmental
5 relations.

6 When the Queen's speech came out yesterday, it was
7 perfectly plain, it had been worked out in advance with
8 the devolved administrations, what applied to them, what
9 Sewel motions would be needed, what had been in
10 negotiation and discussion; all done, despite political
11 divergence, under the cover of reasonable
12 confidentiality.

13 THE CHAIR: For the first time, was it not?

14 PROFESSOR JIM GALLAGHER: No. Every year since God was
15 a boy, since 1999, the Queen's speech has been prepared
16 in consultation with the devolved administrations.

17 THE CHAIR: I mean identified in the memorandum behind the
18 speech, identifying devolution issues.

19 PROFESSOR JIM GALLAGHER: Yes, it's always been around.

20 What's very striking about that is that parliaments had
21 nothing whatsoever to do with it. This takes me back
22 into the territory of the Sewel Convention. The Sewel
23 convention is a government to government convention, it
24 is that the government would not normally ask parliament
25 to legislate. Parliament gives no recognition to this

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1 at all. There's nothing in the standing orders of
2 parliament that acknowledges the existence of the other
3 legislatures in this country.

4 De facto, the small satellite -- as you perhaps
5 unkindly call them -- legislatures do have to
6 acknowledge they have a big brother, and the Holyrood
7 parliament has a procedure, in standing orders, for
8 granting legislative consent.

9 As far as Westminster is concerned, this is
10 something that happens in the background and governments
11 tell them about. That is not right. They ought to be
12 interparliamentary arrangements for that which are
13 recognised in the institutions of parliament.

14 THE CHAIR: At least ought to be recorded, you would say?

15 PROFESSOR JIM GALLAGHER: Absolutely. They should be
16 communicated from one parliament to another that the
17 Scottish Parliament is consenting to the UK Parliament
18 legislating on matter X or Y, not merely be something
19 transmitted by the Minister from the front bench.

20 SIR STEPHEN LAWS: This is just an aspect of a much wider
21 issue, which is that I was asking you about earlier.
22 What the UK interest is in overriding the
23 representatives from a particular area. So there's
24 a much wider issue about how the UK interest, in
25 ensuring that the interactions between different aspects

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1 of devolution in different places work, is represented.
2 And there is no parliamentary mechanism for scrutinising
3 the interaction of devolution and giving effect to what
4 you would expect to be the obligation of the UK
5 parliament, which is to provide an oversight that draws
6 attention to any ways in which the interaction was not
7 working. And that the answer to that is not necessarily
8 to say that the members from the different parts of the
9 United Kingdom should all be involved in legislation
10 relating to one, but that there ought to be some
11 mechanism for scrutinising the interaction of
12 devolution.

13 PROFESSOR JIM GALLAGHER: I cannot quite see my way to the
14 mechanism, Stephen, but the principle I agree with. The
15 constitution of the United Kingdom is the responsibility
16 of the Westminster parliament. It needs to devote time
17 and effort to considering the operation of that
18 constitution and how it's working in practice and what
19 problems have arisen from its operation.

20 If one were simply thinking of Scotland and England,
21 and I agree one should not, but if one were the obvious
22 role for Scottish MPs at Westminster is to take
23 custodianship of the devolution settlement. People
24 often wonder what they are for nowadays, do they just
25 deal with defence and social security or are they a kind

1 of abandoned bunch. In my view, of course they have UK
2 responsibilities, but the thing that is special about
3 them as opposed to an English member is that they ought
4 to see themselves as having responsibility for that
5 aspect of the territorial constitution, ditto Welsh and
6 I guess Northern Irish members as well.

7 Whether there is a mechanism for, as it were,
8 bringing that all together, thinking of the territorial
9 constitution as a whole, there's an obvious role for
10 some sort of select committee. The only one of which
11 I am aware of that has looked in any serious way at this
12 is of course the Lords Constitution Committee. That
13 takes us back to a much wider question about what the
14 House of Lords is for, but it's not a daft thought to
15 think that that's something that that second chamber
16 might take particular interest in.

17 THE CHAIR: Small joint committee.

18 PROFESSOR JIM GALLAGHER: Conceivably, yes. One would have
19 to think of what the terms of reference, what the
20 purpose was. One of the difficulties -- I have happily
21 been involved in intergovernmental processes for many
22 years, and we all agree that intergovernmental
23 committees and so on are highly desirable. Then we went
24 to them, and the experience was kind of tedious because,
25 unless you have a real task to do, you find yourself

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1 meeting for the purposes of meeting. There is a space
2 for that, and the British and Irish council meets for
3 the purpose of meeting; it does not actually do
4 anything, but it is generally regarded as a good thing.

5 One can imagine a suitable parliamentary process --
6 perhaps joint, perhaps two different committees -- whose
7 job it was to take the temperature of the devolution
8 settlements, consider whether the territorial
9 constitution as a whole was actually working, and to
10 draw attention to the places where the shoe pinches.

11 THE CHAIR: Receive Sewel notifications and comment on them.

12 PROFESSOR JIM GALLAGHER: Conceivably, yes, and in the
13 context of your present territory make learned judgments
14 about whether the government has been a good boy in
15 following the procedure you are going to invent.

16 SIR STEPHEN LAWS: And perhaps look at cross border issues,
17 the section 104 orders, and the way in which the bits of
18 a Bill that is deemed to be applying only to England
19 bill that do not apply to England, look at how they --

20 PROFESSOR JIM GALLAGHER: What's very striking again, what
21 I would call the constitutional plumbing, which is this
22 set of orders which live in the Scotland Act
23 principally, but also in the Welsh settlement. They are
24 taken through late at night, often in both Houses as it
25 happens, but no one tells the story about them. The

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1 government has a plan of sorts, though it's often very
2 reactive. Section 30 orders trundle on from day to day,
3 some of them very substantial, and there is no
4 collective oversight of them.

5 I sat recently in a section 30 order -- I'm a very
6 sad person -- in the House of Lords and a bundle of
7 Scottish Lords discussed it. Of course it went through.
8 There's no harm in that particular one, but has anyone
9 looked at what the picture looks like overall? I am not
10 sure they have.

11 THE CHAIR: Thank you very much.

12 PROFESSOR JIM GALLAGHER: Thank you, pleasure to see you.

13 (1.00 pm)

14 (Professor Jim Gallagher withdraws)

15 (1.02 pm)

16 Evidence from MR JOHN MACKAY

17 THE CHAIR: Good morning Mr MacKay, we are sorry we have
18 kept you, but as you have heard we've been writing terms
19 of reference for joint committees.

20 Thank you very much for coming and for giving us
21 a view which is not always in the same channels as the
22 others.

23 We know that UK governments for many years, which
24 didn't have a majority in Scotland -- "for many years"
25 meaning every Tory government since 1959 -- legislated

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1 for Scotland and devolution largely was meant to tackle
2 that.

3 What has not been tackled is the possibility and the
4 practice of members elected for Scottish, Welsh,
5 Northern Ireland constituencies, keeping in power an
6 administration and voting for its legislation where that
7 legislation is purely English.

8 On the grounds of equity, are we not to do something
9 about that if we can do it without too many
10 constitutional elaborations.

11 MR JOHN MACKAY: Can I say thank you for asking me to come,
12 I am really quite surprised to be here, just having put
13 in a contribution, so to speak, as a citizen. But
14 I think the point of equity is quite important. The
15 equity as we see it today though is often reflected in
16 public opinion surveys. I think we have to treat these
17 with a touch of caution because people are being asked
18 quite direct and bold questions on which they are being
19 asked to offer a view, and they may -- or in many cases,
20 a belief; in some cases a very strong belief -- but a
21 belief is not necessarily a truth, so to speak.

22 I think there's a need to look a bit harder about
23 how people understand the governance system, most people
24 do not, and I suppose that was the starting point for my
25 note.

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1 I suppose in a sense what I am partly saying is that
2 we need to think a bit harder about how we communicate,
3 how the system works; we need to think a bit harder
4 about how we can explain the dilemma you have just
5 raised.

6 I suppose, on the face of it, what your question --
7 and I cannot but agree -- that there is a perceived
8 problem. But I think the problem may not be as great as
9 it is if people understood a bit more about the system.
10 I think also there's another issue, not a grievance but
11 an imbalance referred to by the previous witness about
12 the dominance of England.

13 THE CHAIR: I can see that. I suppose ever since The Great
14 Reform Act, all that has been exposed about the interest
15 of the average voter in any part of the UK is his or her
16 indifference until their interests are understandably
17 and immediately engaged. This is one of the
18 difficulties that these surveys, I imagine, always
19 encounter; that they are dependent, to some degree,
20 though they try to pinch out that degree, on
21 communicating information before they can receive it.

22 MR JOHN MACKAY: Indeed.

23 THE CHAIR: Even leaving equity aside, many of the
24 difficulties which have led to the setting up of this
25 Commission have arisen because English opinion has come

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1 to regard the participation of Scottish, Welsh, Northern
2 Irish members in the UK parliament where that parliament
3 is considering English-only legislation as somehow
4 improper, given that the Welsh Assembly,
5 Northern Ireland Assembly and Scottish Parliament exist.
6 Can you sympathise with that view, putting yourself in
7 the shoes of an English man.

8 MR JOHN MACKAY: Yes indeed.

9 THE CHAIR: Again we surely need, even if they do not quite
10 understand why, to tackle that feeling that somehow it's
11 improper.

12 MR JOHN MACKAY: I think I accept the point. I think when
13 I wrote my paper you will obviously notice I did focus
14 on this point, what we might call the factual background
15 and the issues which I felt had not been properly
16 explored. I did not dare run on to offering solutions,
17 there are plenty of people who are offering you
18 solutions from different directions, and I stopped short
19 partly because of inexperience and partly because of
20 a bit of caution.

21 I think, nonetheless, part of the output should be
22 some approach to creating confidence that the
23 governmental systems are working behind the scenes, and
24 often not very obviously, in a tolerably fair way.

25 We heard a bit about that, just at the end of the

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1 last witness's comments. Indeed, in a list of points
2 I might have made is that there is a problem to explain
3 that the existing systems are working properly, so
4 that's the kind of confidence raising measure in terms
5 of public opinion. It's not an easy task, I accept.

6 THE CHAIR: It's not. Some of your paragraphs calculate the
7 number of bills which are principally Scottish,
8 principally English and so on. You did a calculation in
9 2006 and you said that out of 18 primarily England and
10 Wales bills, ten included Scottish material and in eight
11 of the ten that material was substantial.

12 So that leaves, out of 35 bills, 37 non-Scottish, on
13 which Scottish MPs voted or could vote. You said, if
14 that were to change, all sorts of confusion and
15 uncertainty would arise over the primacy of Westminster;
16 the door would be open to separation becoming an
17 inevitability. Why? What is driving this phenomenon
18 towards an inevitable separation?

19 MR JOHN MACKAY: If it were not handled carefully, I said,
20 it could. You would be creating in a sense a dual
21 system of legislation, or a parallel system, within
22 Westminster which might be perceived to be in a sense
23 a distancing, at least from the Scottish end, which
24 would affect Scottish public opinion, and as we know
25 Scottish public opinion is fairly volatile in these

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1 kinds of matters.

2 I also am arguing that in practice when you begin to
3 look at some of these England and Wales acts, quite
4 a lot of them have Scottish implications, though they
5 are not evident.

6 I raised a number of points, one about giving the
7 policy lead to something that might happen here in
8 Holyrood, and that was alluded to in the previous
9 witness.

10 I raised the question also about the law of England,
11 so to speak, extending into Scotland in ways we probably
12 do not quite understand sufficiently well. I think
13 these are two areas where it would be helpful, if you
14 were able to look more at the detail. I am only
15 observing this, so to speak, as an informed citizen, not
16 as an expert.

17 THE CHAIR: I can see a lot of the points you make about the
18 interrelationship of legislation in Scotland and in the
19 UK, how the provisions in one bill are probably an echo
20 of another, or they wrap up in a single bill provisions
21 which apply to England, Scotland, Wales and
22 Northern Ireland.

23 Sometimes, that wrapping up can be difficult in the
24 House of Commons to deal with. I sometimes reckon that
25 it might be better if the government were prepared to

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1 divide their bills, either initially into two bills,
2 let's say, or to treat one bill in different directions
3 by different committees, break it up, commit one bit to
4 one committee and another bit to another committee, then
5 bring them back together. There are lots of -- if you
6 do not like the word fix - wheezes, you could roll out
7 for that. If we did all that, have you any idea whether
8 anyone would notice?

9 MR JOHN MACKAY: I do not think that most citizens notice at
10 all what's happening in parliament. Except that I heard
11 the word "anoraks" before, but perhaps at times I'm
12 a bit of an anorak in looking at some of this
13 legislation. I cannot really answer your question
14 fairly because it's quite a technical question, but
15 I could see it would have implications on who is on this
16 committee, the voting balance and so on, that would
17 raise another set of issues.

18 THE CHAIR: If we did it, whatever it is, would Joe Public
19 recognise it? Give it credit?

20 MR JOHN MACKAY: I don't think so.

21 THE CHAIR: I don't think they would. Thank you. Yvonne?

22 PROFESSOR YVONNE GALLIGAN: Thank you. Good afternoon,
23 Mr MacKay. I would like to pick up on some of the
24 strands that are being discussed here. One of the
25 points of discussion was around confidence and the

1 confidence that people feel that the parliamentary
2 systems are working fairly and that one is not
3 necessarily overstepping the other or overriding the
4 interests of the other, et cetera. In order for that
5 confidence to develop, what do you think would be the
6 necessary things to be put in place for that?

7 MR JOHN MACKAY: That's a rather difficult question.

8 I started in my paper from that stance -- and in
9 thinking about it a little bit afterwards -- there are
10 a number of mechanisms that we have already in relation
11 to parliamentary liaison, although there were some good
12 points being made earlier about the weakness of that
13 approach. I was sitting there thinking these are very
14 potent points being made. We have the concordat
15 arrangements whereby civil servants behind the scenes
16 negotiate and debate these kinds of issues. I remember
17 when devolution started I looked at some of these
18 concordats and they were immensely complicated documents
19 at the time, but I do not think anyone has a clue as to
20 whether they are working properly or not. I think
21 that's perhaps a fair question for you to be asking of
22 the civil servants.

23 In terms of confidence, I think partly it's big
24 picture stories that need to come out to say --
25 did I hear the word mythology earlier -- that we can

1 really start to attack -- not attack, but in a sense set
2 some of these myths aside and say that actually things
3 are working, not perfectly, but they are not nearly as
4 bad as people assume them to be, particularly if you
5 take the point that I was trying to make that English
6 law, I think, does extend into Scotland in various ways
7 that we do not quite properly understand.

8 PROFESSOR YVONNE GALLIGAN: In following up on that then,
9 are you saying that there possibly should be more
10 transparency about the parliamentary decision making
11 processes?

12 MR JOHN MACKAY: That could be so, and more obvious
13 consultation. One of the things that does impress me
14 about the proceedings down the road at Holyrood in
15 relation to bills, the draft bills do get a fairly good
16 run around. One I was involved in, part one of the Land
17 Reform Act, have a very large number of consultation
18 responses, over 3,000, which was extraordinary for
19 a draft bill. Obviously there was a degree of organised
20 lobbying in that, but nonetheless a fair measure of
21 opinion came forwards from the outside that the first
22 draft bill was unsatisfactory and that response made
23 a significant difference.

24 So I think there are ways of perhaps engaging more
25 widely in consultation. In saying that, I have to

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1 recognise that some bills have public interest and
2 others do not, so I think there's a dilemma there as to
3 how you handle that kind of problem. But nonetheless,
4 more consultation, I think, would be helpful.

5 PROFESSOR YVONNE GALLIGAN: At the prelegislative stage.

6 MR JOHN MACKAY: Yes.

7 PROFESSOR YVONNE GALLIGAN: Following from that then, do you
8 think that the MPs, or MSPs, depending on whether this
9 is an England-only bill that has an effect in Scotland
10 or whatever, do you think that MPs themselves, be they
11 Scottish or be they English, have a role to play in this
12 process, as well as it being a public consultation by
13 the government of the day?

14 MR JOHN MACKAY: I think the theoretical answer is yes. But
15 I think the practical answer might be that it's a lot
16 more difficult than one might perceive, simply because
17 of the sheer volume of legislation, I think that's one
18 of the real problems that we have in relation to
19 governmental systems, there is so much of it. We have
20 only really been talking today, I guess, about primary
21 legislation; there's an absolute jungle of secondary
22 legislation going around that gets very little debate,
23 certainly at a public level.

24 Occasionally people may pick up a draft order coming
25 around and a little campaign may be organised, but it's

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1 very episodic kind of activity.

2 PROFESSOR YVONNE GALLIGAN: Thank you very much, Mr MacKay.

3 THE CHAIR: Can I just say in that regard, secondary

4 legislation has been becoming -- certainly over my

5 lifetime -- much more full of really serious impact.

6 It's been increasing, the numbers of orders have been

7 increasing, and the number actually scrutinised by the

8 House of Commons dropping like a stone. So in a sense

9 this isn't a devolutionary problem, this is a much, much

10 wider problem.

11 SIR STEPHEN LAWS: Mr MacKay, good afternoon. I thought you

12 made very interestingly a number of points about the

13 indirect consequences of English legislation outside

14 England. I wondered whether the point you sought, the

15 points you make, would be met if the process of deciding

16 what is done in England, and the process of deciding

17 what the consequences of that are and the extent to

18 which they should be taken account of for places outside

19 England, were more separate.

20 We are dealing with a situation in which the

21 argument is put: all Members of Parliament should be

22 involved in deciding what is done in England, because

23 what is done in England affects people elsewhere. You

24 could say, "Well, let the English decide what happens in

25 England but let's have a separate mechanism for looking

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1 into and scrutinising and drawing attention to its
2 consequences elsewhere", and that came out of the end of
3 what we were discussing with Professor Gallagher.

4 MR JOHN MACKAY: I think in principle that sounds fair.

5 I suppose the problem with that is that the
6 consequences, as perceived before the legislation, may
7 differ significantly from the reality afterwards. Some
8 legislation has lots of consequences that are somewhat
9 unintended sometimes, particularly if it's been badly
10 drafted or with rushed amendments voted in. So I think
11 in theory, yes, but in practice I think it might be
12 difficult to do. The proposition does -- indeed

13 I suppose the proposition I am making here -- involve in
14 a sense complicating the legislative process because of
15 the potential slow-down factors attached to all of that.

16 SIR STEPHEN LAWS: I was going to ask about transparency,
17 but Prof Galligan already has.

18 PROFESSOR CHARLIE JEFFERY: Thank you. I am just moved to
19 ponder on that point and not directly to address your
20 paper, it's probably a prompt for discussion within the
21 Commission. But I have to say I am quite sceptical of
22 the capacity of our political system, genuinely, to
23 think on a UK-wide basis in any systemic way, basically
24 because it's shown no sign of that capacity in the last
25 13 years. I feel the horse may have bolted.

1 Anyway, Mr MacKay I really enjoyed your paper
2 because it brought different thoughts to us than we have
3 heard. Essentially I think you are advising us to be
4 cautious, because you fear it ain't broke.

5 You are very interesting in opening up for us the
6 question of what it is that Scottish MPs, or Welsh or
7 Northern Irish, should be voting on and why they should
8 be voting on it. I think it's clear enough that where
9 we are talking about reserved powers which are UK-wide
10 reach, they should be voting. Where there is
11 legislation which may have an English-only, or some
12 other territorial extent in the main, but may have
13 incidental clauses which touch on Scotland, then there's
14 an argument for Scottish MPs voting.

15 Then there are various areas which you might call
16 spillovers. One is of financial consequences, we talked
17 about that a little earlier; however indirect they may
18 be, they are financial consequences of things that are
19 done for England which feed through to the budget of the
20 Scottish Parliament.

21 You are also talking about items of legislation in
22 England which do not have any legal or financial
23 consequences but which may constrain the actions of the
24 legislature in Scotland or set the agenda, which it's
25 difficult to evade. I agree that there are these

1 spillovers.

2 My question is whether the Scottish MP is the right
3 custodian to look at those spillovers, because they are
4 spillovers which affect, in a sense, the freedom of
5 manoeuvre of the Scottish Parliament and Welsh Assembly
6 and the Northern Ireland Assembly. I'm a little worried
7 that we envisage that MPs have any kind of relationship
8 with the parliament or the two assemblies, and I am not
9 at all convinced that they do.

10 MR JOHN MACKAY: I gave two examples on that. One was the
11 Forced Marriage Act, which is fairly clear, that it has
12 to have force across the whole of the UK one way or the
13 other because it just needs consistency and one does
14 also need to avoid any option for avoidance. But
15 marriage, of course, law is one of the issues which is
16 separate in relation to common law that's evolved with
17 statutory overlays, and therefore it's probably proper
18 it was handled in Scotland. As long as the principles
19 are held firmly, as they were in that case, the
20 mechanics of how it's delivered is another matter.

21 So I think there's a difference between getting the
22 policy principles right and the mechanics right, and
23 probably the mechanics has to be done through Holyrood.

24 The other one I found quite difficult was the Tissue
25 Act because it's such a highly technical issue, and

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1 I personally could not quite understand, in comparing
2 the two bits of legislation, quite why they were
3 different. I did wonder why that one Act, that could
4 not have been handled on a UK basis, but there may be
5 other reasons for that that I am unaware of.

6 I will stop at that point.

7 PROFESSOR CHARLIE JEFFERY: Let me put that question
8 a different way: should it be the Scottish MP who
9 patrols that area of spillover or should it be an
10 intergovernmental negotiation, on a more systematic
11 basis than we have now, which patrols that spillover
12 area?

13 MR JOHN MACKAY: It could be. I presume that behind the
14 scenes there was some debate and negotiation as to why
15 and how it was structured and handled. I think
16 probably, as I say, in the Marriage Act I do not think
17 you could really deny Holyrood the opportunity to
18 legislate on that issue, it's just part of the core
19 business, or core domestic business, of Scotland. Once
20 we have a parliament, it has a role to fulfil, and
21 unavoidably that would be part of it.

22 PROFESSOR CHARLIE JEFFERY: I have one final point: you have
23 been reading some right wing think tank websites, which
24 you think, and I think you are probably right, overstate
25 the scale of claimed unfairness among the English more

1 generally. I think you make a good case in your paper
2 that, objectively, the scale of this issue is not big;
3 the instances when the West Lothian question rears its
4 ugly head are actually few and far between.

5 But it may not be the objective situation that
6 matters, it may be the subjective perception. We have
7 heard a little bit about evidence from public attitudes
8 surveys, which suggests that the English may be
9 beginning to be more concerned about this.

10 MR JOHN MACKAY: Yes.

11 PROFESSOR CHARLIE JEFFERY: If there were a clearer sense,
12 evidenced properly through a range of sources, that this
13 was not just a right wing think tank obsession, do you
14 think then we should act -- I do not mean we the
15 Commission, but we in the British political system --
16 should address the claim to unfairness?

17 MR JOHN MACKAY: I think one cannot set it aside, even
18 though I may have a view that it's not as serious as it
19 is claimed, and setting aside of course the stronger
20 views out on the fringe. But I think this goes back to
21 my original point that we need a better understanding of
22 what the problem is.

23 That problem is changing all the time. If you think
24 about the debate currently in Scotland about devo max,
25 whatever devo max is, that would substantially move the

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1 game along quite a long way.

2 Another point on the same related side, as I made
3 a point in side paper, is that European legislation is
4 coming in from the side, and I think to a degree eroding
5 what is reserved and what is not reserved.

6 THE CHAIR: Mr MacKay, thank you very much indeed. We are
7 very grateful to you for coming.

8 MR JOHN MACKAY: Thank you for asking me.

9 (1.27 pm)

10 (Luncheon adjournment)

11 (2.29 pm)

12 Evidence from PROFESSOR MICHAEL KEATING

13 THE CHAIR: Professor Keating, thank you very much for
14 coming. We are very grateful to you. Perhaps I can
15 make one short housekeeping announcement, which I should
16 do to all witnesses. Your remarks will be transcribed,
17 and they will be sent to you for correction. When
18 corrected they will go on the Commission's website.

19 Let me now plunge in to your helpful paper. If this
20 anomaly of the West Lothian question is, as you say,
21 part of the price the English pay for union, do you get
22 the impression that they are increasingly unwilling to
23 pay the price, or is that simply an undertow of
24 dissatisfaction with politics, which ebbs and flows?

25 PROFESSOR MICHAEL KEATING: I do not think the West Lothian

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1 question is going to be the breaking of the union; I do
2 not think it's that important. I think there are other
3 things that are much more important such as the
4 divergence in public policy on welfare issues, Europe,
5 and political divergence. I think the West Lothian
6 question is purely an irritant to English opinion. It's
7 a democratic anomaly, it is not something, as many
8 people have said, that makes a big difference a lot of
9 the time. I think it is something that can be
10 addressed, it is manageable; it cannot be eliminated,
11 but it can be addressed and by doing so we remove what
12 I think is a legitimate grievance on the part of English
13 opinion, that it is at least theoretically possible for
14 them to be overruled on matters of public policy.

15 THE CHAIR: Exacerbated then, you would say, by passing
16 political phenomena; a Scottish Prime Minister, Scottish
17 Speaker, senior members of the cabinet, some of them in
18 charge of departments which have English-only
19 responsibilities. All these things, even the Scottish
20 clerk of the House, all passing phenomena, otherwise you
21 think just irritation.

22 PROFESSOR MICHAEL KEATING: Yes. If you compare the UK with
23 other countries that have a federal or devolved system,
24 or have a national distinctiveness which has been
25 accommodated in various ways, the extraordinary thing

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1 about the United Kingdom is there is so little grievance
2 in England about the principle of Scottish devolution;
3 they really do not mind Scotland running its own affairs
4 differently.

5 This is not the case in Spain or Canada. The
6 grievance is Scottish influence at the centre. Some of
7 this is simply unjustified because Scotland is part of
8 the United Kingdom, therefore it's perfectly legitimate
9 for Scottish ministers to be present. But that is the
10 grievance. Once that locks on to something that really
11 is a justifiable grievance, then I think you have a real
12 problem. I think this is the sore that's going to be
13 worked on consistently as long as it persists.

14 THE CHAIR: May I turn to the heart of the problem, bills in
15 parliament, bills particularly in the House of Commons,
16 and the difficulties to which English bills, with some
17 non-English supplementary and incidental provisions
18 might give rise in any system of balancing English votes
19 and UK overrides.

20 One of the suggestions you make is that where you
21 have a bill which is English-only, and there are
22 supplementary and incidental provisions which go beyond
23 England, the Speaker might identify the major
24 legislative change and say: this is predominantly
25 English, we will treat it as if it was an English bill.

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1 On what basis would he approach that? What advice would
2 he get? I ask for example because the advice would
3 presumably mostly come from those responsible for the
4 bill and those who have drafted it. That advice would
5 be all one way, so how could the Speaker say: that's all
6 very well, but~...?

7 PROFESSOR MICHAEL KEATING: It's a matter of judgment here.
8 What I've been arguing is for the principle of English
9 Votes for English Laws. I think that principle should
10 be established and I have been arguing that in quite
11 a hard way, compared with Ken Clarke's notion, which is
12 I think rather a weak way of doing it. I am saying
13 effectively there should be an English veto and that,
14 where a matter is contentious and the government cannot
15 command an English majority of its own MPs, it should go
16 for a larger majority somehow or else accept that this
17 bill is not going to go through.

18 Your question relates then to how one identifies
19 what is an English bill. If it is a contentious matter,
20 if there's a contentious matter there that affects the
21 whole of the United Kingdom, then it's not an English
22 bill by my definition. If these are routine technical
23 matters then I do not think there's a problem there. It
24 may be an anomaly, but I do not see a problem there.

25 Exactly how the Speaker would make the judgment,

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1 I don't know. But these kinds of judgments are made all
2 the time in governments and I think --

3 THE CHAIR: Yes indeed, but equally oppositions of their
4 nature, hype up procedural questions into political
5 questions. You are always going to be at risk of that,
6 are you not? Unless you have some perhaps impossible
7 unchallengeable way of deciding, there's always going to
8 be a bit of leeway which an opposition will very
9 properly exploit.

10 PROFESSOR MICHAEL KEATING: Indeed they will, but much of
11 the British constitution works upon conventions and
12 understandings and things that you cannot actually
13 specify in hard law. This will only work, and I think
14 this is consistent with all the other submissions, if
15 there are understandings and conventions. If those
16 conventions are not there, then the system is not going
17 to work and at the moment I do not think we have those
18 shared understandings, that is why we have the
19 West Lothian question.

20 So what I am arguing is one can minimise the
21 West Lothian question, one can make the anomaly less
22 egregious, but one cannot eliminate it altogether, there
23 will always be questions of contentious judgement; you
24 cannot escape that.

25 THE CHAIR: You would go for saying that the punishment for

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1 abusing the system, if one might put it that way, would
2 be political?

3 PROFESSOR MICHAEL KEATING: I suppose the incentive would be
4 for the government to abuse the system by saying this is
5 a UK bill, simply on the basis of technicalities.

6 THE CHAIR: One can imagine that a government with
7 a majority in the UK, but not in England, would look
8 over its shoulder perhaps and say: we have our seats to
9 defend in England next time round. There would be
10 pressure on them not to override, with the power of
11 a temporary majority, the conventions.

12 PROFESSOR MICHAEL KEATING: Well, I'm saying that they would
13 not be able to override an English majority because
14 I would take the second reading in an English Grand
15 Committee, so this gives English MPs a veto. Once it
16 proceeds beyond that, if it's a matter of details
17 I think one can talk about can compromise and
18 negotiation.

19 But I'm saying if it's a matter of principle and
20 this would be really, really quite rare because you
21 would have to have the two conditions: one that it's an
22 issue of so much importance that you have a division and
23 secondly that it is clearly an English bill.

24 In that case I think the government would either
25 have to retreat or seek out an English majority. This

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1 is seen as an anomaly in the House of Commons because
2 you expect the governments to get all their bills
3 through all the time. This is a British anomaly, but
4 it's perfectly normal in other parliamentary systems
5 that you seek out -- whether it is third parties
6 negotiating with the opposition, you seek to enlarge
7 your majority to get certain types of legislation
8 through.

9 THE CHAIR: Taking the long view it's only been an anomaly
10 since 1830, you may say.

11 PROFESSOR MICHAEL KEATING: Yes.

12 THE CHAIR: Given this balance of English-only on the one
13 hand and England - and - elsewhere on the other,
14 a government in a tight spot probably wouldn't
15 override but with a bill that it wanted to get past
16 second reading and without an English majority, they
17 could put down a motion to say the standing order which
18 imposes an English majority shall not apply.

19 PROFESSOR MICHAEL KEATING: Yes, of course.

20 THE CHAIR: They would pay the penalty for that if it seemed
21 to be wrong.

22 PROFESSOR MICHAEL KEATING: Ultimately the House of Commons
23 can change its own procedures.

24 THE CHAIR: One of the issues that we've been pursuing has
25 been the bill which is undoubtedly England-only, but

1 which indirectly, through the Barnett formula or through
2 some other mechanism or connection, is not capable of
3 being voted on by Scottish, Welsh or Northern Irish
4 members but has effects on them in the real world.

5 Some of our witnesses have argued that if
6 a programme bill has an effect on the block grant to
7 Scotland, it's not the programme bill that does the
8 damage, it's the appropriation bill.

9 The trouble with that argument is -- the purely
10 technical, procedural argument - that you cannot debate
11 the appropriation bill; it's just not drafted to allow
12 you to do that. Indeed the standing orders say you
13 cannot do it. It seems to me the only way round this is
14 to devise some improved form of devolutionary
15 cooperation which would give Westminster a particular
16 interest with the devolved legislatures in the working
17 of the system. More particularly it might be indicated
18 on a bill in some way, and I am not quite sure what that
19 way would be, that this, if passed, would have an effect
20 on the block grant. Or part of this bill has been
21 subject to a Sewel Motion, an LCM.

22 Is there a bigger picture here of better cooperation
23 between the centre and the periphery?

24 PROFESSOR MICHAEL KEATING: The answer to your last question
25 is certainly that there can be. But let me open up this

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1 one: I am rather sceptical of the idea that whenever
2 there's a spillover implication for another jurisdiction
3 they have a legitimate interest. I think we are
4 fighting against this in Scotland for a long time saying
5 we have to decide our own policies here, autonomously.

6 Yes, things that happen in Scotland have spillovers
7 in England, it does not mean that Westminster can
8 intervene in the Scottish legislature. We have to
9 accept that as something that happens amongst the
10 jurisdictions. But where there's a direct effect, and
11 where the Barnett formula comes in, then there's
12 something to be addressed. But I do not buy the
13 argument about the Barnett formula because the Barnett
14 formula is not even statutory, let alone constitutional.

15 All the constitution says is the Secretary of State
16 will make available monies for the Scottish block grant,
17 or whatever it's called.

18 It's also widely agreed the Barnett formula is
19 something that will need to be addressed at some point.
20 So locking in a constitutional provision on the basis of
21 a formula that everybody wants to change anyway I think
22 would be a bit strange.

23 The point about the difference between the
24 legislation and appropriations I think is right, but
25 though I am sure you are right in that the way it works

1 out technically, it's very difficult to separate them.
2 But once again I think we need a way in which we can
3 separate out appropriations from England from decisions
4 about block grants for the devolved assemblies anyway.
5 If we did that we could make quite clear that one is
6 a Scottish matter, or a UK matter, and the other is not.

7 Now, as far as the detailed workings of the Barnett
8 formula are concerned, some differences in appropriation
9 have Barnett consequentials which cancel each other out.
10 If you move from education to health or whatever, it
11 cancels it out. If you move from health say to defence,
12 it then becomes an UK matter. So I don't think it's
13 true to say that any vote on an English bill that may
14 have financial consequentials immediately has Barnett
15 consequentials, that's not necessarily the case.

16 Bearing in mind my bigger point is that I think we
17 need to sort out territorial finance in a much better,
18 more transparent way, which would clearly be something
19 at an UK level which would involve the UK parliament but
20 also negotiations with the devolved assemblies to bring
21 them into that and separate them out from decisions
22 about the functional allocation of spending in England.

23 THE CHAIR: Something which the UK parliament and the
24 devolved legislatures would have to do together.

25 PROFESSOR MICHAEL KEATING: Yes, sure. There is need for

1 a much, much better mechanism for dealing with
2 intergovernmental finance. David Heald will talk about
3 this in a much more informed way than I can, but I think
4 that needs to be resolved and clearly that's something
5 that's not just for the UK parliament but is also
6 intergovernmental because there are interests and
7 knowledge and things that have to be brought to bear
8 before those decisions are made, which involve all the
9 legislatures of the United Kingdom.

10 THE CHAIR: After all, a House of Lords committee decided,
11 three or four years ago, that the Barnett formula was
12 flawed, which is an extra argument I suppose.

13 Can I turn lastly, and then hand over to my
14 colleagues, to the information which we have not had
15 from anyone else, about the Belgian arrangements. You
16 say:

17 "They depend on governing coalitions being wide
18 enough to have a majority in both Flemish and Walloon
19 regional assemblies and community arrangements."

20 Can you spell that out a bit more and help us
21 understand whether that model could be transported to
22 the UK, or needs to be amended before being transported,
23 or could not be transported at all?

24 PROFESSOR MICHAEL KEATING: Well, the conditions are quite
25 different because in Belgium you have proportional

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1 representation and a multiparty system and all
2 governments are coalitions. Not just two party
3 coalitions, but quite broad coalitions so you get
4 shifting coalition patterns in a more flexible way than
5 we have.

6 It is also understood, and some of this is
7 legislative too, there have to be representatives of
8 both communities in governments and quotas for ministers
9 and civil servants and an consociational element as well
10 as a federal element. The politicians did have
11 a convention that there would be symmetric coalitions,
12 the same coalition everywhere. That's now broken down
13 because the elections are no longer held on the same day
14 so we get a bit of difference, but nevertheless they
15 make sure that, in the case of the Flemish legislature
16 which combines the community and the regional
17 legislature in one, that is what creates the anomaly,
18 that there is a government majority in both formations.

19 That's possible because it's a multiparty system,
20 because they are used to having coalitions, you can --
21 it took them nearly a year to form a government last
22 year, it's becoming extremely difficult to do this, but
23 in a multiparty system, in principle, it's possible.

24 Now none of that can be translated to Westminster,
25 but what can be translated to Westminster is the idea

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1 that a government, if it wants to govern in both the UK
2 and in England on the same basis, would have to
3 concurrent majorities. I am suggesting it would not
4 necessarily have to have a fixed majority but at least
5 for its English measures it would have to put together
6 majorities. So in that sense it would be like the
7 Belgian system, you would have make sure that you have
8 enlarged majorities at different levels to get
9 legislation through.

10 THE CHAIR: So there would have to be an awful lot of
11 negotiation behind closed doors between the parties to
12 knock something out?

13 PROFESSOR MICHAEL KEATING: Yes. I mean it would bring life
14 to parliament in a sense because the locus would be the
15 parties in parliament. I am not suggesting the
16 backbenchers would have any say, but at least you would
17 have negotiation between parties. But in the United
18 Kingdom we do not have multiple parties, although we
19 have a UK coalition because the Conservatives couldn't
20 govern alone at the UK level. Similarly at another time
21 they might have to bring the Liberal Democrats in -- or
22 the Labour party would have to bring the
23 Liberal Democrats - in for English measures in exchange
24 for concessions. They may have to bring in the Greens
25 or whatever, or they may even have to do deals with the

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1 opposition.

2 This is normal in legislative systems. In this
3 country it probably happens within the parties, rather
4 than between the parties. Of course we know that in the
5 UK parliamentary rebellions are more and more frequent
6 nowadays; governments find it more and more difficult to
7 get their legislation through, even with the their own
8 party.

9 So that would happen but let's remind ourselves that
10 the occasions in which there have been really
11 contentious bills being pushed through without a English
12 majority are fairly rare. Most of the time we would be
13 talking about technical matters or matters of small
14 margins of disagreement rather than big issues of
15 principle.

16 THE CHAIR: Thank you.

17 PROFESSOR CHARLIE JEFFERY: Hi Michael. I wanted to stick
18 with money for a moment. In lots of the views we have
19 heard, and I think more widely as well, there is an
20 assumption that the Barnett consequential effect is very
21 direct. That's, in a number of respects I think, quite
22 a flawed assumption and I think what you are saying
23 suggests the same.

24 But I think you are also saying: let's just get this
25 complication out of the way and have a different, and

1 perhaps more rational basis for territorial financial
2 allocations.

3 You say that ways can be found to make the broad
4 decision about the territorial allocation of spending
5 responsibility of the whole House. What ways did you
6 have in mind?

7 PROFESSOR MICHAEL KEATING: I have not prepared anything
8 even in my mind on that one. But eventually we have to
9 get to a system where the territorial distribution of
10 resources is de-linked from the functional allocation in
11 England -- which is an odd way of doing things, I do not
12 know any other country that has it that way -- and go
13 towards a system whereby funding for the devolved
14 administrations is based upon their own resources and
15 then equalisation taking into account needs and
16 resources.

17 That would be normal in any kind of federal system.
18 Normally this would be done on the basis of a formula
19 which would then be negotiated politically and tweaked
20 in all kinds of political ways. Then this would become
21 part of the allocations that have been voted on at the
22 time of the appropriations. So we have a decision in
23 the House of Commons about functional allocations in
24 England and a decision about the territorial allocation
25 ultimately decided on by the House of Commons, but on

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1 the basis of a formula that was reasonably transparent.

2 PROFESSOR CHARLIE JEFFERY: I am sure you have read our
3 remit, which rules some things out of our reach. Are
4 you suggesting though that our remit might need to be
5 stretched a little bit, in that this different way of
6 approaching territorial finance would be a necessary
7 part of dealing with the irritant of the West Lothian
8 question? Are they necessarily linked or could you deal
9 with West Lothian and still live with the messy
10 financial arrangements that we have?

11 PROFESSOR MICHAEL KEATING: You could -- my whole approach
12 to this is that you can't resolve all these questions at
13 the same time. Some people say we should have a grand
14 settlement and sort everything out at the same time and
15 do all the trade-offs. The experience of countries that
16 have tried to do this, other than at times of revolution
17 or post war reconstruction, is that you get nowhere.
18 There are too many veto points, the agenda is far too
19 loaded, you have to proceed bit by bit.

20 At the moment the remit appears to be focused on
21 English Votes for English Laws and about legislation
22 which I think is a problem. The Barnett thing is less
23 important because, after all, the Barnett formula
24 consequentials do become a block grant, they do not
25 directly affect the function allocation in Scotland.

1 The degree to which they effect the total flow of
2 resources to Scotland is limited since most domestic
3 expenditure is Barnettised anyway. So if you lose on
4 one, you can hit the other.

5 So that's a less urgent question and I do not think
6 you need to address that whole question before you can
7 address the West Lothian question. I think you do
8 something about the West Lothian question, even in
9 advance of resolving the financial formula. We've been
10 talking about the Barnett formula for over 30 years and
11 we have not resolved it, so I do not think you can wait
12 on that before you can address this question of voting
13 on English laws.

14 PROFESSOR CHARLIE JEFFERY: Moving on to the legislative
15 side, you have set out a vision of a hard version, or
16 strong version of English Votes for English Laws. You
17 have not told us explicitly how you would
18 institutionalise that. You do talk of rights in various
19 places, does that suggest a legislative solution to
20 establishing whichever system of English versus UK
21 majorities overrides or not?

22 PROFESSOR MICHAEL KEATING: Yes. I would. It could be, the
23 House of Commons standing orders or you could put it in
24 legislation. I am not sure that it would make that much
25 difference because the House of Commons can then change

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1 its mind subsequently in either way, but I tend to
2 favour something like the Parliament Act which is just
3 an act of parliament; that's the one that limits the
4 powers of the House of Lords, but is accepted as
5 constitutional now and untouchable. That's what I mean
6 by a hard solution which would be regarded as being
7 binding and not something that the House of Commons
8 could simply set aside when it was inconvenient to keep
9 with it.

10 PROFESSOR CHARLIE JEFFERY: One last thing if I can. There
11 might be a distinction made between the West Lothian
12 question and the English question with the West Lothian
13 question being the irritant; something which is a bit
14 annoying for the English to which a response is needed.

15 An English question might be conceived as something
16 broader, and that is a legitimate claim for the English
17 to have governing arrangements which somehow aggregates
18 and responds to an English collective interest. I guess
19 there's a dividing line between the two things on the
20 a spectrum on which they both sit, but where do you
21 think we are on that spectrum at the moment?

22 PROFESSOR MICHAEL KEATING: I think we are a long way from
23 addressing the English question, in fact there's not
24 even a consensus on what the English question is. The
25 neat solution which is to have a home rule all round, a

1 federal system is just a non-starter; that is not going
2 to happen, it is not worth talking about an English
3 parliament for all kinds of reasons.

4 The other ramifications of the English question are
5 to do with the internal constitution of England, which
6 I think is much more important issue than the question
7 of an English parliament, about local governments, city
8 regions, whatever they are going to go for if they are
9 not going to go for regions, if that is no longer on the
10 agenda. But I think that is quite separate from this
11 one here.

12 Addressing the West Lothian question is part of the
13 move towards some surrogate for English home rule, it is
14 giving them some elements of home rule, but it's not
15 giving them a parliament because nobody is asking for
16 that.

17 PROFESSOR CHARLIE JEFFERY: Do you see a demand for an
18 English governing arrangement which could be
19 a West Lothian question which, in a sense, is
20 articulated not as the negative response to bad things
21 that Scotland does to us, but a positive sense of we
22 need a forum for the expression of an English interest?

23 PROFESSOR MICHAEL KEATING: Well that's why I'm suggesting
24 this English Grand Committee, which could be quite
25 a powerful body. But the implications of your line of

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1 questioning is that we should have some kind of English
2 executive, separate from the United Kingdom governments.

3 Again, I do not think that's on the agenda, I do not
4 think there's any demand for it, it would create all
5 kind of anomalies that are much more difficult to
6 address than these legislative ones. So some time in
7 the future that might develop, there might be some kind
8 of demand for English government, the United Kingdom
9 might fall apart. But I think that's not the question
10 at the moment, the question at the moment is this
11 perceived lack of a capacity for English MPs at the
12 legislative level to make decisions.

13 As many people have pointed out in practice it's
14 a fairly remote possibility but it's a democratic
15 anomaly I think should be addressed.

16 PROFESSOR YVONNE GALLIGAN: Good afternoon, Michael. One of
17 the areas that I wonder if you have any thoughts on is
18 how can the way of providing a voice for English
19 interests, English opinion and English preferences, be
20 facilitated prior to the point at which an English-only
21 bill is declared? Or can be facilitated in the context
22 of an English and Wales bill or something like that?
23 Have you any ideas in that regard?

24 PROFESSOR MICHAEL KEATING: That's a very interesting
25 question, I think that's a very important question

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1 because it gets us to the heart of these issues about
2 accountability, democracy, policy making and linking in
3 to people. Which I think is a more serious problem than
4 the West Lothian question incidentally, and it does not
5 just apply to England.

6 I have not thought about that and I have not looked
7 at the procedures for consultation over English issues,
8 I have looked at the ones in Scotland that determine the
9 length and how legislation is made. But if one is
10 talking about English opinion, then we must not imagine
11 English opinion is united on things; English opinion is
12 divided in all sorts of ways. So I think what you are
13 talking about is a forum for English opinion rather than
14 an expression of a single English voice. I have not
15 frankly thought about that.

16 PROFESSOR YVONNE GALLIGAN: Would there be any lessons to be
17 learned from the international experience or other
18 legislatures or anything in your knowledge that would
19 have some kind of a novel -- some way of handling
20 different ways -- handling how to express different
21 interests that come through the system?

22 For example, I am thinking that in terms of
23 Northern Ireland one of the early efforts there to embed
24 the new legislative practices and procedures was to have
25 a Civic forum that was meant to feed into the

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1 legislative process. Now, that had a history in its own
2 right but at least the Civic forum was an attempt to
3 bring together public views on policy issues in order
4 for them to be addressed with the Northern Ireland
5 Assembly. Would you think that there are those kinds of
6 structures or processes that could assist?

7 PROFESSOR MICHAEL KEATING: Yes, we had a forum here too
8 which did not last either, which faded away. But yes,
9 I think the Westminster has a lot to learn from other
10 legislatures about how to do consultation and about how
11 to do policy making. It has a lot to learn from the
12 devolved legislatures about how committees can be
13 involved in the policy making, and that certain
14 committees can be both select committees and standing
15 committees at the same time; legislative committees and
16 investigative committees, at the same time.

17 I am not saying it's always worked very well here
18 but it's a model in principle that I think parliamentary
19 reformers have been advocating for a long time. That
20 would be one way in which English interests could be
21 better focused on legislation and indeed a better
22 quality of legislation as well.

23 It's possible that debates in the English Grand
24 Committee could then become the focus of media
25 attention, but then I think the media just confuse

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1 English and British issues anyway, they just report
2 things without mentioning that they are English and
3 although this annoys us a lot, I do not think it annoys
4 the English, because as far as English opinion is
5 concerned, this is the national agenda. I do not think
6 they feel their issues are being marginalised in a way
7 that maybe the peripheral nations feel their interests
8 are marginalised because they are not on the BBC all the
9 time.

10 In that sense the English and UK national forums for
11 debate tend to merge. I don't think the English are
12 particularly aggrieved about that because I do not think
13 they are even aware of that. But could the quality of
14 the legislative process be improved? Yes, yes for sure,
15 I did not think about that because that's separate from
16 the West Lothian question, but certainly it could, yes.

17 PROFESSOR YVONNE GALLIGAN: One other question, Michael: the
18 Basque and Navarre examples that you raise in your
19 paper -- the chairman has already brought out the
20 aspects of the Belgian question, are there issues and
21 solutions -- are there any lessons to be learnt for our
22 remit from the Basque and Navarre?

23 PROFESSOR MICHAEL KEATING: No because they do not have any
24 provision about this at all, the Basque and the Navarre
25 MPs vote in the central parliament the same as the

1 others. Politically the way it works is that most
2 Spanish governments are minority governments; although
3 the present one is not, the last one was and this is
4 normally the case. Therefore to get all their measures
5 through parliament they need to put together majorities.
6 They never do it by coalition, they do it by bargaining
7 with the other parties, which is what I am suggesting
8 might happen in England. You do not need a formal
9 coalition, you can make agreements about legislation,
10 supply, partial, for one year, the whole parliament,
11 that does not matter. That's what happens.

12 As it happens in Spain, the territorial parties are
13 overrepresented because the system is not particularly
14 proportional. So territorially concentrated parties get
15 more seats than parties whose votes are dispersed. This
16 means that the Basque and the Catalan nationalist
17 parties are always there and sometimes hold the balance.
18 Therefore, they are the ones they reach out to.

19 This might seem anomalous but it's very stabilising
20 for the Spanish system because it ties in the periphery
21 into the centre; it makes them play Spanish politics all
22 the time, even the Basques. The Catalans are very happy
23 about this because that's the way they think of
24 themselves, as playing in Spain and Catalonia at the
25 same time.

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1 That's the political condition under which it
2 operates, but it also simply happens to be the case that
3 both the main parties, the Socialists and the
4 Conservative party have done these deals with Basque
5 nationalists all the time. Navarre is an even stranger
6 case because there's a Navarre party which is more or
7 less permanently allied to the Conservative party; it is
8 a bit like Bavaria with the CDU.

9 So territorial politics plays into the central
10 parliament in Madrid but because both main parties do
11 it, neither reproaches the other one because they know
12 they have done it in their time as well; it's regarded
13 as normal. That's just a political fact, it may seem
14 anomalous, and when people in Madrid think about it, it
15 gets them very annoyed and then they realise of course
16 that their party is doing it. So it has not become
17 a major issue, which surprises me because I go to Spain
18 and I tell them about the West Lothian question and they
19 say: that's terrible, and I say it happens here.
20 I suppose it does.

21 It's just -- so the political conditions are
22 absolutely everything. Here of course we know we would
23 see it as an anomaly if it was seen as a Labour
24 government imposing on a Conservative England, that's
25 the circumstances in which we imagine it happening, and

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1 that then would become a political grievance for English
2 Conservatives.

3 PROFESSOR YVONNE GALLIGAN: So it says as much about how the
4 problem is framed and perceived as it is about the
5 problem itself?

6 PROFESSOR MICHAEL KEATING: Yes, and about the implicit
7 balances that are made. There's the knowledge that
8 having the Basque nationalists coming in and voting on
9 the Spanish budget actually ties the Basques into
10 Spanish politics in a way that they would not be if they
11 were expelled if they were not allowed to -- so in a
12 strange way bringing in the nationalists reinforces the
13 union.

14 PROFESSOR YVONNE GALLIGAN: Thank you.

15 SIR STEPHEN LAWS: Just following up on the
16 comparative question. One of the things that is said to
17 us very often is that what is unique about our system is
18 that we have one component of the union that is
19 85 per cent of the whole. I wondered if you know of any
20 other national systems that deal with a similar
21 situation to ours, or is there none, or is the Spanish
22 one similar?

23 PROFESSOR MICHAEL KEATING: The Spanish one would be similar
24 in relation to the Basque system of finance, which is
25 the only real element of asymmetry in the Spanish system

1 because most of the other asymmetries have been smoothed
2 out because the other regions have been given the same
3 powers as Catalonia and the Basque country and
4 Andalucia, they have come up to the same level, except
5 for the financial system.

6 The Basque country and Navarre between them would
7 have about 7 or 8 per cent of the population, probably
8 about the same as Scotland. But that just applies to
9 finance not to the overall legislative programme as
10 happens. So the position in the United Kingdom,
11 Scotland Northern Ireland, and now in Wales with
12 legislative powers is I think unique. I cannot think of
13 another system like that.

14 SIR STEPHEN LAWS: Can I talk you through your suggested
15 response? We've been encouraged to think of a response
16 rather than an answer by some of our witnesses; to think
17 of a response rather than an answer to the West Lothian
18 question.

19 Your suggestion is that you have English votes in
20 English proportions at second reading and at committee
21 stage but that the whole House considers a bill on
22 report stage and at third reading. That is right?

23 PROFESSOR MICHAEL KEATING: Yes.

24 SIR STEPHEN LAWS: Taking those in turn, the second reading
25 do you think that might not turn into something that did

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1 not have any practical effect because any government
2 that was at risk on second reading would ensure that the
3 bill contained enough elements that would be attractive
4 to those that would otherwise vote against the Bill to
5 get it at least through second reading.

6 PROFESSOR MICHAEL KEATING: Yes exactly, that's exactly what
7 would happen. They would then have to negotiate outside
8 their own party to secure that majority.

9 SIR STEPHEN LAWS: Then to get it through committee stage,
10 the government, if it did not control the English
11 majority, would be vulnerable to having the bill changed
12 into the bill that the English majority wanted in
13 committee stage.

14 PROFESSOR MICHAEL KEATING: Well, I assume that any
15 amendment radically changing the bill would be
16 considered to be a wrecking amendment. The only
17 amendments that would be accepted would be genuine
18 amendments rather than attempts to destroy the bill,
19 that's what committee stage is about.

20 SIR STEPHEN LAWS: It would always be in order to leave bits
21 out.

22 PROFESSOR MICHAEL KEATING: Again, Sir William can confirm
23 this but I understand that wrecking amendments are
24 simply out of order to destroy the purpose of a bill.
25 That second reading has established the principle of the

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1 bill and then committee stage is about amending it.

2 SIR STEPHEN LAWS: You could not destroy the whole purpose
3 of the bill, but if the bill had several purposes you
4 could remove two or three of them.

5 PROFESSOR MICHAEL KEATING: You can amend the bill for sure,
6 it could come out looking different, absolutely.

7 SIR STEPHEN LAWS: Then at report stage you say:

8 "Report and third reading could be taken in the
9 whole House. This would provide the opportunity not to
10 reinstate the government's original bill but for
11 cross-party negotiations to arrive at a compromise."

12 How do you envisage the government would be
13 inhibited from reinstating its original bill at that
14 stage?

15 PROFESSOR MICHAEL KEATING: Well because you would have the
16 political sanction of a bill that had been voted on
17 second reading in one form confirmed -- in the committee
18 stage and then the government would have to say: well
19 look, we are going to -- disentangle this, we have
20 overriding reasons to put in, to reinstate our own
21 original purposes, or what really would have wanted to.

22 Now, assuming we are talking here about amendments
23 and not the main purpose of the bill. Because the
24 second reading is about the principle and committee
25 stage is about amendments. I am not even confident of

1 this, I might even go so far as to say take the third
2 reading and the report stage at the Grand Committee, but
3 I think at least it would be reasonable for the
4 government to be able to come back again and say let's
5 negotiate about this, knowing that there's a political
6 cost involved here, and we have got down to matters of
7 detail in which we can have some kind of accommodation.

8 It may well be a bill has come out of the committee
9 stage with anomalies, amendments that are simply not
10 going to work, or that are inconsistent. Committees do
11 this the whole time so governments have to come back and
12 say: your two amendments do not add, up they contradict
13 each other. So it's normal at third reading and report
14 stage to sort out this kind of thing, that would have to
15 happen. If this became a issue of absolute principle,
16 then whoever was insisting excessively on imposing their
17 own principle would have to pay the political cost for
18 it.

19 SIR STEPHEN LAWS: Is the political cost more likely to have
20 to be paid if there is absolute clarity on whether the
21 bill deals only with English issues, because is there
22 not a risk that if the question of whether or not the
23 bill is an English-only bill is open for argument, that
24 will muddy the waters when it comes to seeing whether
25 the English opinion has been overridden?

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1 PROFESSOR MICHAEL KEATING: Well, if a bill has been ruled
2 as an English-only bill and the government says well
3 look, we think there are clauses here that apply to the
4 entire UK that are so important that we would want to
5 override the English, they could take them out of the
6 bill in the first place and put them somewhere else;
7 that's what a wise government would do before it got
8 into this kind of mess.

9 SIR STEPHEN LAWS: Maybe the government --

10 PROFESSOR MICHAEL KEATING: You cannot legislate in detail
11 for political negotiations and political compromise, you
12 have to say: these are the basic rules and
13 understandings in which politics will take place.
14 Politics is a matter of the balance of power. Some
15 things are quite clear, such as that the view of the
16 English majority should be preponderant to where it's
17 clearly English matters, some things are much less
18 clear. These will be matters of political negotiation
19 and in my proposal I am trying to reduce that margin of
20 ambiguity to the minimum and to less important, more
21 technical matters, but we cannot eliminate it
22 completely.

23 SIR STEPHEN LAWS: I think what has been put to us is that
24 there would be a risk that a government would in fact,
25 if it were at risk from the English majority, would in

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1 fact succumb to the temptation to muddy those waters,
2 not by separating the provisions out but by joining them
3 all together - so that the issue, at report stage, would
4 be the ambiguous issue whether or not the bill was an
5 English bill.

6 PROFESSOR MICHAEL KEATING: What I am suggesting is that if
7 there were significant provisions in the original bill
8 that were contentious, were opposed in the House of
9 Commons, which were UK-wide, then it's not an English
10 bill. Then it becomes an UK bill.

11 SIR STEPHEN LAWS: Thank you.

12 PROFESSOR MICHAEL KEATING: If the government wants play
13 that game consistently, then it has to accept the
14 political consequences. Effectively they would be
15 tacking English provisions on UK bills, put it that way.
16 That might be a tactical way of doing it, but they would
17 be violating the understanding and the convention and
18 I think they would expect to suffer a penalty for that.

19 SIR STEPHEN LAWS: You would accept that the inhibition
20 would be on the government rather than on members from
21 outside England and Wales who may not have any interest
22 in how the government fares at the English ballot box.

23 PROFESSOR MICHAEL KEATING: Indeed, indeed. One of the
24 anomalies that arises in the West Lothian question is
25 that the non-English MPs are reliable lobby fodder; they

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1 do not care, they will always vote for the government,
2 so they are actually diluting the quality of the debate
3 about English bills. There may be genuine concerns in
4 England, including within the governing party, these are
5 simply overridden by bringing in Scottish MPs and we
6 know that that has happened.

7 SIR STEPHEN LAWS: Thank you very much.

8 THE CHAIR: Thank you very much Professor Keating. We are
9 very grateful to you.

10 (3.14 pm)

11 (PROFESSOR MICHAEL KEATING withdraws)

12 (3.15 pm)

13 Evidence from PROFESSOR DAVID HEALD

14 THE CHAIR: Professor Heald, good afternoon.

15 PROFESSOR DAVID HEALD: Good afternoon.

16 THE CHAIR: As you may have heard me say to

17 Professor Keating, there is a transcript, it will be
18 sent to you for correction, then put on the website.

19 One preliminary question from me: at the present
20 moment something like a third of the acts passed at
21 Westminster in any session apply to England-only. In
22 fact I think it's rather more in the present Queen's
23 speech, but let's take it, it's that kind of proportion.

24 At the same time, English opinion apparently is
25 beginning to think that non-English participation in the

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1 passage of their legislation is inappropriate. Suppose
2 we were able, after discussion and evidence to come up
3 with a solution which fixed the problem, would anyone
4 pay any notice in England?

5 PROFESSOR DAVID HEALD: I think probably at that point,
6 rather than directly answer your question, I should make
7 an introductory statement. Unlike people like
8 Professor Keating, I am not a parliamentary specialist;
9 I am not a political scientist; my interests are
10 essentially about public finance. You will remember
11 a very long time ago that you were the Clerk of the
12 Scottish Affairs Committee and I was the specialist
13 adviser when Donald Dewar was the Chair and that's when
14 we got the information about the Barnett formula into
15 the public domain.

16 So I am in no sense a parliamentary specialist.
17 I have read all your evidence very carefully and found
18 some of it very interesting, but there's no way in which
19 I can discuss with the people facing me some of the
20 detail. But on the broad issues, I am quite happy to
21 talk about the broad issues.

22 THE CHAIR: Very good. Let us then go directly to the
23 Barnett formula. We have heard a lot of evidence about
24 its complications, we know that the House of Lords
25 committee was quite rude about it. Does it really need

1 changing in the interests of the future of devolution in
2 the House of Commons?

3 PROFESSOR DAVID HEALD: That's suitably awkward, but that is
4 an entirely different question. There's a very
5 significant danger of only talking about part of the
6 problem, and one has to contextualise the problem. The
7 West Lothian question was never intended to be answered.
8 It was an obstruction to Scottish devolution and I have
9 had a very long political commitment to UK devolution --
10 devolution across the UK, but particularly to Scotland.

11 So this is a question that was never intended to
12 have a solution. As your evidence from the Scottish
13 National Party makes very clear, one solution to the
14 West Lothian question is for Scotland to have
15 independence and for the other constituent nations of
16 the United Kingdom to have independence. The other
17 possibility would be to go back, not pre-1999 but to go
18 back pre-1880s, and have a fully integrated
19 administration for the United Kingdom.

20 The essential problem is that England is too big, in
21 population terms, relative to the rest of the UK. The
22 previous witness was asked about comparable countries;
23 I think Canada is the federation with the largest single
24 component and I think Ontario is about 35 per cent of
25 the population. So the essential UK problem is the

1 balance of population. That imbalance of population,
2 with England having 85 per cent of the total population,
3 is over time becoming more pronounced.

4 One of the other contextual factors is that, either
5 through deliberate policy intent or accident, economic
6 prosperity increasingly gets concentrated into the
7 expanding geographical area of the greater south east of
8 the United Kingdom. So the political context is
9 important.

10 I think also in terms of the broader issue of the
11 role of MPs from the non-English parts of the Union,
12 there's a danger of overemphasising the issue of
13 Barnett. Certainly one of your witnesses in written
14 evidence said that if you moved to more fiscal
15 devolution, the arguments against a devolution discount
16 become less important. I think that is just
17 overemphasising the public money side of it, and
18 understating the importance of the Westminster
19 parliament as the parliament that decides things like
20 social security; it decides defence, it decides whether
21 one is at war and, increasingly importantly,
22 relationships with the European Union.

23 So the fundamental problem is the imbalance of the
24 population sizes of the countries, about which one can
25 do virtually nothing. I think the reason why the

1 West Lothian question has come back as a question to
2 which there is not supposed to be an answer, is because
3 in recent years one had an unpopular tail end of a long
4 running government, one had a Scottish Prime Minister,
5 the Labour government lost its majority of English
6 seats. To some extent this is an argument about
7 numbers, about numbers in the Westminster parliament.
8 Political majorities in the Westminster parliament are
9 accentuated by the Westminster parliament still having a
10 first-past-the-post electoral system. So one of the
11 things that accentuates any numbers effects of the
12 West Lothian question is the electoral system.

13 I don't think there is a solution. I have read
14 through all your evidence, the historical solutions have
15 been the devolution discount that applied to
16 Northern Ireland under the Government of Ireland Act.
17 It has been proposed as a potential solution in the
18 context of devolution post 1999.

19 But my general observation would be that one of the
20 things that would worry me about the United Kingdom now
21 is the increasing disengagement of Scotland from the
22 Westminster parliament in terms of the profile of
23 Scottish MPs. If you compare the profile that Scottish
24 MPs actually have within Scotland, compared with what
25 they used to have pre-devolution, there's a significant

1 issue.

2 Leaving aside the technical mechanisms that you
3 might be able to devise for certain technical English
4 bills, the more unwelcome Westminster seems to Members
5 of Parliament from non-English nations, the more likely
6 one is going to get disengagement from the Union. So
7 there's a context where what seemed like relatively
8 small changes might well, in fact, have quite
9 significant long term consequences.

10 THE CHAIR: Thank you. One of the issues we were discussing
11 this morning with one of the previous witnesses was how
12 little, especially in the context the Barnett formula,
13 all the legislatures involved cooperated. We were
14 suggesting, and the witness was quite interested in the
15 suggestion, some kind of UK committee, parliamentary
16 committee, to keep the working of the Barnett formula
17 under review.

18 Now, is that a target to look at? Is there any
19 point in their doing a thing like that in the
20 generality, or looking at bills as they come forward;
21 altering the system if the system is rubbing?

22 PROFESSOR DAVID HEALD: I think the Barnett formula and the
23 West Lothian question are somewhat different issues.
24 I think that some of the debate about the West Lothian
25 question at the moment in England is really about public

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1 money; it is about Scotland and the devolved nations
2 seeming to have more money than England has. So the
3 connection is not particularly a constitutional or
4 financial connection, it's a psychological, political
5 connection.

6 The reason why the Barnett formula survived for so
7 long is essentially that there are political
8 difficulties involved in potential replacements. In
9 1976, a very long time ago, I proposed a Territorial
10 Exchequer board that would have representation from the
11 devolved nations and the UK government. Very clearly,
12 the UK Treasury would not want to relax the control that
13 the existing system gives to the Treasury. One of the
14 reasons why Barnett survived is that it is a conflict
15 minimisation process for the UK government, though it
16 would be quite possible, and several people have
17 proposed, to have an Australian-style Commonwealth
18 Grants Commission; that process would be both more
19 expensive, it would be much higher political profile and
20 it would be very much less under the control of the
21 United Kingdom government.

22 The devolved administrations generally think they
23 get a reasonably good deal out of the process, compared
24 to what they might get from some other process. Hence
25 there has not been that significant pressure from them.

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1 THE CHAIR: No impetus almost from any quarter.

2 PROFESSOR DAVID HEALD: The point is that if you read the
3 English newspapers, it's obvious Scotland gets too much
4 money. If you read the Scottish newspapers it's obvious
5 that Scotland doesn't get enough money. You can make
6 exactly the same point about Northern Ireland or Wales.

7 So essentially the reason why everyone is against
8 Barnett is that everybody thinks, or at least everybody
9 makes out, that they get a bad deal out of it. One of
10 the dangers on the funding side is the fact that
11 perceptions clash so much. There's very little shared
12 understanding.

13 SIR STEPHEN LAWS: Can I explore the issue that I think has
14 been troubling us in relation to the Barnett formula,
15 which is how relevant is it to what we are considering?

16 If I can paraphrase the two points of view: one
17 point of view is that the passage of ordinary primary
18 legislation is part -- it is not all of it -- but it is
19 part of the mechanism by which parliament scrutinises
20 and controls the allocation of expenditure.

21 The other view is you cannot treat the scrutiny and
22 supervision of the allocation of expenditure on a case
23 by case basis, bill by bill. It's a polycentric
24 question, it has to be decided as a whole, it is decided
25 as a whole through the budgetary process, and the proper

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1 way for parliament to involve itself in that is by
2 looking at that part of the process, the process that
3 decides how much money is allocated to matters that are
4 devolved, how much is allocated to reserved matters,
5 speaking broadly. It is not to treat it as an aspect of
6 every bill that is connected with that process.

7 PROFESSOR DAVID HEALD: That's a complicated question.

8 SIR STEPHEN LAWS: It is I'm afraid.

9 PROFESSOR DAVID HEALD: I think in terms of the issue about
10 the role of Scottish MPs, rather than emphasise the
11 Barnett implications of English legislation, for example
12 why you would not want a devolution discount, is about
13 the broader role that in the past one would have called
14 the Imperial role of the Westminster parliament. It's
15 the Union role of the Westminster parliament and any
16 diminishing of the role of non-English MPs, I think,
17 would be quite serious.

18 I think legislation on health or education that the
19 devolved administrations pass can have implications for
20 England. Prescription charges or free personal care are
21 good examples where there might be subsequent English
22 ramifications in terms of pressure.

23 But I think one then comes back to the point about
24 this 85 per cent of the population living in England.
25 There's an analogy from US antitrust; if you are the

1 very big player in a marketplace the rules that apply to
2 how you behave might not be quite the same as apply to
3 the smaller players. The kind of implications for
4 fundamental change in England, for example in the way
5 universities are financed, or housing finance, or the
6 National Health Service are much more likely to flow
7 through, through UK control of budgetary processes to
8 the devolved administrations, than what happens in the
9 other direction.

10 It would be very difficult I think for non-English
11 MPs to take the view that certain measures of welfare
12 state restructuring that were actually introduced
13 specifically for England in the first instance were not
14 going to have significant long term consequences for
15 their own constituent nations. That is not just
16 a question of how the Barnett mechanism works at the
17 moment.

18 In terms of your broader question about public
19 money, the Westminster parliament's basically given up
20 about the processes of public money. When Sir William
21 edited the 1997 version of Erskine May I was one of the
22 people involved in the financial chapters, behind the
23 scenes writing of them. Essentially, the financial
24 processes of the Westminster parliament have become
25 almost totally formal so that the political debate --

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1 the debate about public money does not take place
2 through the formal processes of the Westminster
3 parliament, in the same way it would for example in the
4 US Congress.

5 SIR STEPHEN LAWS: I think that's true so far as the
6 legislative implementation of budgetary decisions is
7 concerned, the Appropriation Act is --

8 PROFESSOR DAVID HEALD: The Appropriation Acts flow out.
9 The significant parts of the UK budgetary process used
10 to be the annual public expenditure White Paper and the
11 budget, it's now the spending review. What actually
12 comes out subsequently in consolidated funds bills and
13 appropriations bills is a consequence of Cabinet
14 decisions that were taken a long, long time before.

15 SIR STEPHEN LAWS: Is not the spending review then not
16 scrutinised in the departmental select committees? It's
17 true that a lot of the scrutiny of public finance in the
18 United Kingdom is done in retrospect, a sort of
19 auditing, by the Public Accounts Committee and so on.
20 But there's a degree in which the budgetary process is
21 still supervised through the departmental select
22 committees not through the formal procedures --

23 PROFESSOR DAVID HEALD: I think supervised is much too
24 strong a word.

25 SIR STEPHEN LAWS: Scrutinised, then?

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1 PROFESSOR DAVID HEALD: Yes. I spent a long time as
2 specialist adviser to Westminster committees, but the
3 initiative is entirely an executive initiative in the
4 UK.

5 SIR STEPHEN LAWS: So the argument that would be put is that
6 if that's the way that budgetary processes are
7 scrutinised generally in the United Kingdom parliament
8 it's inappropriate to add a particular quirk to the
9 legislative process that provides scrutiny just to this
10 issue about whether or not expenditure is allocated to
11 particular parts of the United Kingdom.

12 PROFESSOR DAVID HEALD: I do not quite get your question.

13 SIR STEPHEN LAWS: The budgetary process is scrutinised
14 through the select committees, it may not be as
15 effective as it might be, but that's the process that's
16 been found to be the most appropriate process for
17 scrutinising the budgetary process. It cannot be more
18 effectively scrutinised through looking at the
19 individual bits of legislation that give effect to parts
20 of each budgetary settlement.

21 PROFESSOR DAVID HEALD: But it's the individual pieces of
22 Westminster legislation, say for example on the funding
23 of higher education, or on the structure of the health
24 service, that will flow through to have the budgetary
25 consequences for England and then have budgetary

1 consequences for the rest of the United Kingdom.

2 To go back, you have implied that that was the
3 optimal arrangement. My view is that UK arrangements
4 are not optimal, the UK arrangements are far too
5 executive dominated and that parliament is too weak.
6 I am not quite sure how that relates to Barnett itself,
7 other than the fact that, because of this executive
8 dominance of the UK, the executive could say: we are
9 going to keep it that away.

10 I am much more favourable to Barnett than most
11 academic observers. One only has to go back to Goschen,
12 in the 1880s, to realise that such mechanisms would not
13 survive unless there were some political or
14 constitutional advantages in having them. But one of
15 the reasons it does survive is because you have this
16 executive domination of the process.

17 I think I mentioned before that some of the
18 West Lothian question is really a proxy debate about
19 public money. I would personally -- I've been arguing
20 for more transparency in devolved finance for 30 years
21 -- welcome more opening up at the Westminster parliament
22 of the process. In fact, it's my research and some of
23 the things I have done, including papers I constructed
24 on the way that Barnett works on the basis of Freedom of
25 Information requests, that has increased what's publicly

1 known. The Treasury has always very reluctantly
2 released material.

3 If the argument is that Westminster should open up
4 the process of Barnett, I entirely agree. I think it
5 would be much better. But what I am saying is that the
6 whole thing is so executive driven; part of that
7 executive driving is through the control of getting
8 legislation through the House, that then leads to the
9 programme expenditure.

10 Now there would be certain cases where, if I was
11 a Scottish MP, I would quite happily think that some
12 issues were entirely an English matter. But there will
13 be some issues which involve matters of fundamental
14 policy on which, because England is the dominant nation
15 in the Union, one would expect that this would have some
16 ramification for other nations. Whether it's correct or
17 not, one part of your written evidence said Tam Dalyell
18 had voted on higher education reforms, even though it
19 was nominally an English matter because he thought that
20 there were ramifications.

21 SIR STEPHEN LAWS: That would only be the case if the piece
22 of English legislation that was involved, if defeated,
23 would have the consequence that expenditure would move
24 from a reserved matter into a transferred matter or
25 vice-versa. Because just changing what you do in

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1 England does not necessarily change the amount of money
2 that is available to the English department or work
3 through into the Barnett --

4 PROFESSOR DAVID HEALD: To give you the example of higher
5 education, the recent changes to higher education
6 funding have taken money away from the department --
7 from DEL, the Departmental Expenditure Limit, which is
8 Barnett relevant, and the loans are not -- most of the
9 loans are not Barnett relevant.

10 So even though something which can seem only about
11 the legislative and administrative management of English
12 programmes can subsequently have knock on effects to the
13 funding of the devolved administrations. So all I'm
14 saying is I would have thought that, going back, if
15 I was a Scottish MP, there would be certain
16 legislation -- if the draftsman kept Scottish provisions
17 out as a matter of course, where one would happily
18 say: these were not anything to do with Scotland. But
19 there will be some things, and the written evidence
20 supports that view, which you can easily foresee that
21 there will actually be consequences.

22 SIR STEPHEN LAWS: Does not a lot of the written evidence
23 assume that if you defeat a provision that is reducing
24 expenditure, that you get the expenditure back - when
25 that is not the case, because what happens is that the

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1 reduction has to move somewhere else. Perhaps somewhere
2 where there is no legislative requirement?

3 PROFESSOR DAVID HEALD: One would have to be specific.
4 Governments can do things by administrative means.
5 Without being knowledgeable about the English
6 legislation on NHS reforms I've heard it said by many
7 people, and seen it written in comment, that a lot of
8 the things the government was trying to do by
9 legislation could have been done by administrative
10 means. In fact a lot of the re-organisations of English
11 health service provisions were actually done before
12 enactment anyway.

13 So I suspect that one of the practical consequences
14 of depriving a government that didn't have an English
15 majority of a right to use its full majority on English
16 measures would be for it to find administrative ways of
17 doing things, rather than using legislative measures.

18 The tradeoff with the UK -- given the extent of
19 ministerial power -- is between doing things
20 legislatively and doing things administratively.
21 I suspect that governments would not concede.
22 A government without an English majority would not
23 concede that on major things, like health and education,
24 it would see its priorities frustrated and it would
25 find other means of doing it. That could make the House

1 of Commons less relevant.

2 SIR STEPHEN LAWS: But in fact that is what happens, and
3 that is because the budgetary settlement is not formally
4 connected to the legislation --

5 PROFESSOR DAVID HEALD: I accept that.

6 SIR STEPHEN LAWS: -- what the government has to do, if it
7 loses its legislation, is to find another way to meet
8 its budget, rather than change its budget.

9 You could not move an amendment to the health bill
10 to say: this has effect in England, provided it has no
11 effect on expenditure in Scotland. That would not be
12 a suitable amendment, it would not be in order to do
13 that. So why can you do it -- why do people say it's
14 relevant and argue that it is something you can do
15 indirectly? That is the argument that's put.

16 PROFESSOR DAVID HEALD: I wasn't suggesting there was
17 a particularly close connection between what particular
18 legislation the government -- parliament passes in a
19 particular parliament, and provisions of the next
20 spending review. Obviously in some cases there can be,
21 in other cases there will not be.

22 The point I was trying to make is that, given the
23 domination of the House of Commons, inevitably, by
24 members from English constituencies, Members from
25 non-English constituencies are going to think carefully

1 about the implications. If they are excluded from
2 voting on measures that they perceive have relevance in
3 the long term to their constituencies, what I would
4 worry about would be the disengagement of non-English
5 MPs from Westminster.

6 As I was arguing, I have long been a strong
7 supporter of devolution but I think one of the things
8 I have noticed is how difficult the existence has been
9 for Scottish MPs post devolution. Post devolution,
10 unless of course you are a minister. So you have this
11 bifurcation between -- if you're a cabinet minister and
12 Scottish MP you have a huge profile, but if you're an
13 ordinary backbench government or opposition Scottish MP,
14 you are pretty marginalised already. I do wonder
15 whether one -- if the non-English MPs felt excluded, as
16 opposed to not voting on things they did not care about
17 anyway -- you would find a higher level of disengagement
18 from the non-English MPs. That would not be helpful for
19 the Union.

20 SIR STEPHEN LAWS: Would you accept that feeling excluded on
21 the basis of that perception, and having that exclusion
22 removed, would be second best to being more directly
23 involved in scrutinising and supervising the budgetary
24 process, which is what is seen by them to be the thing
25 that they have an interest in?

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1 PROFESSOR DAVID HEALD: But MPs in the House as a whole do
2 not scrutinise. You can either see it as a great
3 advantage of the UK system that parliament is weak and
4 governments get their views on public money -- there's
5 a significant body of academic economics opinion that
6 believes that having strong finance ministries and
7 strong executive government is the way to control
8 deficit and debt. From an accountability point of view
9 that is damaging.

10 Although I spent far too much of my working career
11 advising select committees not to want to underestimate
12 the potential, but in 20 years of working for the
13 Treasury Committee it was made very clear by the
14 Treasury who actually controls the public finances of
15 this country. It is the Treasury.

16 SIR STEPHEN LAWS: I think I see that. What I think
17 I cannot see is the argument for saying that there
18 should be some additional power over the budgetary
19 process introduced in this one area where --

20 PROFESSOR DAVID HEALD: Sorry, I do not quite understand the
21 question. I have not argued for -- if we are still on
22 the West Lothian question -- English Votes for English
23 Laws. I was making a more general point, that in a
24 Union parliament where monetary policy, trade policy, EU
25 policy, defence policy -- all away from the domestic

1 policy of the devolved administration's control --
2 actually rests with the United Kingdom parliament, it
3 might be difficult to separate out English bills from
4 non-English bills.

5 That the idea that there are some things that only
6 affect England, well that may well be true but as I say,
7 I suspect that some of the present attention to the
8 West Lothian question is actually a proxy argument about
9 money. I would rather have the real argument about
10 money.

11 SIR STEPHEN LAWS: I think that's what I was putting to you,
12 but thank you, that's helpful.

13 PROFESSOR YVONNE GALLIGAN: I would like to follow up in
14 a more general way some of Sir Stephen's comments and
15 discussion with you, if I may, Professor Heald. From
16 what I have been hearing, you have been really
17 suggesting a democratisation of decision making around
18 public money. Would that be correct? Would that be
19 a proper inference from what you have been saying?

20 PROFESSOR DAVID HEALD: As I said a moment ago, I think
21 there's a conflict between two different types of
22 considerations. There is a view, particularly in
23 academic economics, that strong finance ministries, weak
24 legislatures are actually beneficial for control of
25 public spending.

1 The contrary view would be that where you have weak
2 accountability from the parliament and weak engagement
3 of the parliament in the scrutiny of public finances,
4 that does create legitimacy problems. I see that as
5 a very difficult tension to resolve. But I do think
6 that the UK is too much at the end of executive control.
7 As I said a few minutes ago, I think what makes the
8 non-statutory basis of the Barnett formula less
9 exceptional than it might seem to an international
10 audience is that this is how the Treasury does business.

11 There is also the point that the Treasury has always
12 regarded Barnett as quite convenient because it did not
13 have to fight Scotland, Wales and Northern Ireland on
14 detail where the Treasury was not as much in control of
15 the detail as the territorial departments, and could
16 then, having got the England numbers, just add on so
17 much for the devolved administrations. So there was
18 a kind of economy in decision making aspect to it.

19 But in terms of your broader question, I am not sure
20 I want to unthinkingly go along with democratisation,
21 but I do think the UK Westminster processes are
22 unsatisfactory and I think that Westminster can learn
23 things from the way the devolved assemblies themselves
24 have tried to get more engagement in the budgetary
25 process.

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1 PROFESSOR YVONNE GALLIGAN: Following from that very helpful
2 development of your thinking in that regard, two ideas
3 come to my mind. One is that there is, as you have
4 raised, the issue of well what basically do Scottish MPs
5 do when they do not have much of a role in all this?
6 And the consequence is some kind of a disengagement from
7 the process, lack of an incentive to in some way remain
8 part of the process. Particularly as, being Scottish
9 MPs, their profile in Scotland has diminished
10 significantly.

11 Rather I would suggest, a little like Scottish
12 members of the European parliament when they go to the
13 European parliament, versus when they are operating in
14 their own -- in the Scottish politics environment for
15 example, or as politicians before they were elected to
16 the European parliament.

17 PROFESSOR DAVID HEALD: Just so that I could not be
18 misinterpreted, I wasn't meaning to criticise Scottish
19 Members of Parliament for their position post
20 devolution. I was much more concerned about, as you
21 said, the lack of media attention they get. I am quite
22 aware that many Scottish MPs work incredibly hard in
23 their constituency roles and in their Westminster roles,
24 but it's very difficult to get political recognition for
25 those roles unless you have a front bench job or you are

1 a minister.

2 PROFESSOR YVONNE GALLIGAN: I think that's absolutely
3 understood, yes.

4 Then from our point of view, which comes to my
5 second point. Our remit, which is to come up with some
6 kind of formula, or formulae to the consequences of
7 devolution for the House of Commons in fact seems to
8 reinforce these conundrums. So I just wonder how we can
9 get out of that problem. The problem being that the
10 framework within which we are working is in fact
11 reinforcing or likely to reinforce the difficulties that
12 you point out.

13 PROFESSOR DAVID HEALD: To the extent that, as I said
14 before, I think some of the revival of the West Lothian
15 question is really an argument about money and I would
16 rather have the argument about money. Clearly that's
17 outside the remit and capacity of the Commission to
18 directly deal with.

19 Sorry, could you remind me of the question?

20 PROFESSOR YVONNE GALLIGAN: My point was, and question
21 is: how do we try and find a way around the conundrum
22 that we are in, which is that the issues that we are
23 dealing with are in fact reinforcing the problems --

24 PROFESSOR DAVID HEALD: Apologies for losing my train of
25 thought. I do not think there is an answer within the

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1 context of Westminster -- there is not a final answer in
2 the context of the Westminster parliament, to this
3 issue, which resolves from the fact that England is 85
4 per cent. There is absolutely no indication of desire
5 for uniform devolution across the rest of the United
6 Kingdom in terms of a regional -- devolved legislative
7 regional governments in England. People would question
8 the relationship between the English parliament and the
9 English government with the federal parliament and
10 federal government.

11 I think the other thing which probably -- to some
12 extent it depends on whether people are actually
13 worrying about the principle of the West Lothian
14 question -- the principle of people whose constituents
15 are not directly affected voting, or whether they are
16 actually interested in the numbers.

17 As I mentioned earlier, the numbers issue is
18 accentuated by the electoral system at Westminster. So
19 part of my answer to the West Lothian question would be
20 the fact that the devolved administrations all have
21 forms of proportional representation and, if Westminster
22 had forms of proportional representation, the actual
23 numbers issue would be less important. There's
24 a certain irony in that one of the things that's driven
25 it recently has been foundation trusts and higher

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1 education fees when non-Blairite members from Scotland
2 and Wales voted with the government to help suppress
3 Labour rebellions from English constituencies on those
4 issues. So I think there's a very precise political
5 context to it.

6 Equally, there were very long periods -- although at
7 that time there were not devolved administrations --
8 when an UK Conservative government depending on an
9 English majority was enforcing policies in Scotland that
10 were not acceptable to the majority of Scottish opinion.
11 So I think the United Kingdom is a very untidy place.
12 It is a very untidy place. You would never design
13 a country with such unequal populations, certainly with
14 the continuing trends. But you have to try and find
15 ways of making that work.

16 As I said at the very beginning to Sir William, I am
17 not a parliamentary specialist and the extent to which
18 it would be possible in parliament to follow
19 Professor Keating and find ways of designating certain
20 bills as English which would be accepted by people not
21 from England; that these were genuinely matters that did
22 not affect them, either immediately or in the long term,
23 I am not really in a position to make a judgment.

24 PROFESSOR YVONNE GALLIGAN: One last question, if I may: how
25 do you see this arrangement, this Barnett formula

1 arrangement, working out ten years down the road? Will
2 it be in its current form in ten years' time or will
3 there have been sufficient pressures in the system to
4 change that in some shape or form?

5 PROFESSOR DAVID HEALD: I don't know. Let's completely
6 forget the question of Scottish independence, let's
7 assume that in ten years' time the United Kingdom exists
8 broadly as it does now. I suspect the name Barnett will
9 go at some point, but the reason for suspecting that
10 something like it will still exist goes back to the fact
11 that the Goschen formula was established in 1888 and
12 lasted until at least 1959; we know there were remnants
13 of it between 1959 and 1980.

14 So when you have these kind of imbalances, having
15 this population type mechanism is convenient, and limits
16 political conflict. If you wanted to do it, you could
17 certainly establish a Territorial Exchequer Board, you
18 could do a needs assessment across the whole of the
19 United Kingdom, but nobody should underestimate either
20 the cost or the difficulty of a needs assessment because
21 the more policy diverges at the nation level, the more
22 argument there is going to be about what is 'normal'.

23 Since devolution there are more examples of that,
24 but my favourite example has always been whether -- if
25 you did a needs assessment -- the fact that Scotland has

1 separate denominational and Catholic school systems, is
2 a policy choice or a need indicator. Anybody who thinks
3 that is simple should remember that when the needs
4 assessment exercise was done by the Treasury in 1978,
5 the Welsh language was not regarded as a needs
6 indicator. So it just shows the difficulty of doing it.

7 You could certainly establish the mechanisms that
8 countries like Canada and Australia have, but you still
9 run into these huge population imbalances. I suspect
10 that the Treasury will be very nervous of getting into
11 that kind of situation because they might think they
12 would be seriously outdone by the expertise that the
13 devolved administrations have.

14 Also, nobody should ever think that needs
15 assessments are technical exercises; they would be
16 extremely political exercises. If you remember what
17 happened around the time of the March 2012 UK budget, if
18 you think that was a bad example of leaking, you should
19 wait and see when a needs assessment was done; there
20 will be huge manoeuvring around it.

21 So my guess would be that something of the same
22 type. I proposed a long time ago how you could
23 recalibrate Barnett. There are certain implications
24 from the Scotland Act, and the Calman tax, but I think
25 one of the points I would emphasise about Calman is the

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1 Calman tax, whereby ten income tax points are
2 transferred to Scotland alone; ten points which Scotland
3 either has to replace or lose their money, is not that
4 much different from the tartan tax, in terms of the
5 amount of tax discretion.

6 It might be symbolically more important, and it will
7 force the Scottish Parliament rightly to make a taxation
8 decision, but it's not -- in terms of discretion -- as
9 much different as people say.

10 Obviously the point I deliberately cast aside when
11 starting to answer your question is, of course, the
12 whole issue of the independence referendum. You can
13 have great fun with the numbers, depending on how you
14 treat oil in terms of revenue and what kind of time
15 period you take. One of the United Kingdom's continuing
16 problems are remarkably different perceptions, in
17 different parts of the United Kingdom, about who
18 subsidises who. It's pretty obvious in middle England
19 that middle England is subsidising Scotland, but that's
20 not a view generally held on the streets of Edinburgh.

21 PROFESSOR YVONNE GALLIGAN: Thank you very much.

22 PROFESSOR CHARLIE JEFFERY: Thank you. Hello David. I want
23 to ask a really simple question, asking it is probably
24 quite simple, answering it may not be. We have heard,
25 and we can read in all sorts of places, that it is

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1 problematic to think of excluding Scottish MPs from
2 voting on matters which are in their reach England-only
3 because of the consequential effects on the block grant
4 that Scottish Parliament spends.

5 What I would like you to do is to take me from a) to
6 b). Point a) is a law passed in Westminster which sets
7 in prospect an increase or decrease in expenditure on an
8 comparable function, comparable to a devolved function
9 and b) is a change in block grant. How do we get from
10 a) to b)?

11 PROFESSOR DAVID HEALD: I came with the numbers about the
12 West Lothian question in my head, not with the numbers
13 about the Barnett formula in my head.

14 PROFESSOR CHARLIE JEFFERY: It's not about numbers, it's
15 about the stages. Causality is what I am looking for.

16 PROFESSOR DAVID HEALD: In terms of the mechanics of
17 Barnett, the Treasury publishes, at every spending
18 review, a book which tells you what proportion of
19 a particular line of an England programme is actually
20 comparable in Scotland Wales and Northern Ireland. So
21 for health it's almost 100 per cent. There will be some
22 programmes where the percentage is much lower, so the
23 percentage actually varies according to UK departments,
24 and obviously it's affected by reconfiguration of UK
25 departments.

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1 So if expenditure is reduced in England by
2 £100 million, you then multiply that by the
3 comparability factor, you then multiply it by the
4 population factor, which is about 10.3, 10.03 or
5 something like that, to find the consequences. This is
6 symmetric in the sense that £100 million reduction on an
7 English programme held to be comparable to Scotland --
8 to Scotland or Wales and Northern Ireland -- generates
9 a number that is reduced from the Scottish Welsh or
10 Northern Ireland block.

11 PROFESSOR CHARLIE JEFFERY: How does that track back to
12 legislation about programmes?

13 PROFESSOR DAVID HEALD: Not directly to legislation, but if
14 the UK government gets permission, for example to
15 introduce GP consulting charges, or for example to bring
16 in much higher education fees, then cuts the grant of
17 the higher education funding council for England. So
18 there is a change -- if you go back to the specific
19 points of legislation, but I was saying to Sir Stephen
20 earlier, the link is not normally so direct but on
21 certain key legislative programmes you can actually
22 chart the link.

23 But the important point about Barnett is that you
24 aggregate all those pluses and minuses and then tell the
25 Department of Finance & Personnel in Northern Ireland or

1 the Scottish Government, or the Welsh Assembly
2 Government, what their aggregate number is.

3 The great advantage the Barnett formula system for
4 the devolved administrations is that they retain policy
5 expenditure-switching discretion within the block.
6 Going back to the period I was talking about earlier, it
7 was very interesting that the Conservative Secretary of
8 State at the time was very enthusiastic, in 1980, about
9 the formalisation of the expenditure-switching
10 discretion, which Barnett had given to him as Secretary
11 of State for Scotland.

12 So there's two things about Barnett. One is the
13 automatic nature of it that stops the Treasury
14 specifically saying: we are going to spend more money in
15 England, but Northern Ireland does not need it. It's an
16 automatic link. Plus the fact you can then decide what
17 your own priorities are within the amount that comes out
18 at the end.

19 PROFESSOR CHARLIE JEFFERY: I get all that. The thing I am
20 really interested in is the legislative decision in the
21 Westminster parliament, which is not normally directly
22 connected to a comprehensive spending review, not in a
23 direct sense, producing -- the link between the
24 legislative decision and what is in the comprehensive
25 spending review. That seems to me to be quite an

1 indirect link because, as you say, it's an aggregation
2 of all sorts of things, from legislative and executive
3 decisions which produce those numbers, and those lines
4 which have Barnett consequentials.

5 PROFESSOR DAVID HEALD: I cannot remember what exactly was
6 in the Public Bodies Act, but if the UK government
7 abolishes certain public bodies in England, which have
8 functions which involve expenditure, the reductions in
9 expenditure then feed through the formula to the
10 assigned budgets of the devolved administrations.

11 If what you are saying is most of the time, on
12 a year by year basis, or on an individual spending
13 review basis, that it is much more about executive
14 decisions about how much spending is going to go up or
15 how much spending is going to be down, of course
16 I agree. But in terms of defining the responsibilities
17 of the state and what is actually going to be paid for
18 by the state and what's going to be paid for by the
19 individual, those can have ramifications for a very long
20 time.

21 The example I gave you was about higher education
22 funding, whereby even though you can argue that the
23 English reforms and higher education will actually lead
24 to higher public expenditure, it's higher public
25 expenditure which comes under a different budget heading

1 which does not have the comparability consequences.

2 That's a atypical example of directness. But the
3 kind of policy changes taking place in England in the
4 health service -- because England in policy leadership
5 is so dominant in the UK, it would be very difficult to
6 argue that some of the changes in England were not going
7 to have potential long term budgetary consequences for
8 what is spent in England. If you are trying to say well
9 there's an automatic direct link, no, there's not. But
10 the question about the definition of state
11 responsibilities does actually have consequences.

12 PROFESSOR CHARLIE JEFFERY: Can I ask the same question in a
13 slightly different way? You have given us a number of
14 examples about the reduction of spending in particular
15 areas in England, but we had a period between 1999 and
16 2008, thereabouts, where the direction of our arrow was
17 a different one. If I understand Barnett right,
18 a sustained period of higher public spending on
19 programmes in England should have led to some level of
20 convergence through the operation of the Barnett
21 formula. But my understanding is that the level of
22 convergence that has happened is rather less than should
23 have happened through a rigorous application of the
24 formula. Would that be a correct interpretation?

25 PROFESSOR DAVID HEALD: You are quite right that in the

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1 2000s -- with huge increases in public spending -- huge
2 amounts of additional money came down the Barnett
3 pipeline. That was driven by perceived requirements of
4 the then government for much more public spending on
5 health and education in England. My view at the time
6 was that those spending increases were probably too big
7 to be fully effective in England and they probably were
8 not what the devolved administrations needed.

9 One of the practical problems is because the
10 Treasury controls the system devolved administrations
11 were nervous of getting their End-Year Flexibility to be
12 too high. Predictably, eventually the Treasury
13 confiscated the End-Year Flexibility balances. That is,
14 I would regard, one of the inefficiencies of the system.

15 In terms of your specific question about
16 convergence, I have always been puzzled that there was
17 not as much convergence as I had been predicting because
18 my first predictions of what was going to happen about
19 the path of convergence date back from 1980.

20 I think there are several explanations of why that
21 might happen. There are some technical explanations,
22 which is that devolved functions have not stayed the
23 same, so there's been some expansions and transfers in.
24 The Treasury tend to collect data for its own
25 operational requirements, not for the interests of

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1 academics or observers of the political process. If you
2 look at the Northern Ireland figures, I think you will
3 find significant evidence of convergence in
4 Northern Ireland.

5 Andrew Goudie, who relatively recently retired as
6 Chief Economic Adviser for Scotland, published a paper
7 in an issue of Scottish Affairs in 2002 that I edited.
8 Andrew Goudie published it then, and it's been
9 subsequently republished by the Scottish government,
10 that if you remove social security, agriculture, the
11 European-driven type programmes, you see more
12 convergence. You get less convergence than
13 I expected -- when they are talking about convergence
14 they are talking about per capita expenditure and one of
15 the significant points is that most of the population
16 growth in the UK in the last 30 years has been in
17 England.

18 So there are various factors. I would very much
19 like to have had better data in the public domain but,
20 as I have said, my guess is -- the Treasury does not
21 give very great priority to these matters and I suspect
22 that now it could not really reconstruct very
23 satisfactory data.

24 One of the things about trying to build bigger,
25 better consent about the financing systems within the

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1 UK, going back to Professor Galligan's earlier question.
2 I think that because of European constraints about the
3 operation of VAT and corporation tax, we may well see
4 some more tax devolution on income tax but I still think
5 we are going to have a system which is quite heavily
6 grant dependent. I think that one of the issues that
7 would build bigger consent to the devolution system
8 outside the devolved nations would be greater
9 transparency about the system.

10 It's much more easy to portray hysteria about how
11 the system operates when the numbers are incomplete.
12 But I think there has been some convergence, the lack of
13 convergence I think in the case of Scotland is probably
14 as much to do with the population numbers as it is to do
15 with anything else.

16 PROFESSOR CHARLIE JEFFERY: Thank you.

17 THE CHAIR: Thank you very much. Thank you very much

18 Professor Heald. Thank you for coming in and assisting
19 us this afternoon. And taking me back a long time.

20 (4.14 pm)

21 (PROFESSOR DAVID HEALD withdraws)

22 (4.21 pm)

23 Evidence from LORD ROBERTSON OF PORT ELLEN

24 THE CHAIR: Lord Robertson, thank you very much for coming,
25 we are very grateful to you. You have heard a bit of

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1 what's been going on and you know where our centre of
2 interest lies, although occasionally we wander from that
3 centre.

4 We are talking, and your paper also talks, about
5 public opinion in England: what kind of a legislature do
6 they want? Perhaps we do not know that, but what we are
7 clear about, I think we would agree, is that they think
8 Scotland is getting more than its proper share of the
9 cake and they want to stop Scots interfering, as they
10 would see it, in English legislation.

11 At the same time, English dissatisfaction might be
12 thought to be broader than just objection to Scots
13 voting on English legislation. The tempo of English
14 concern is growing, whether it's nationalism or simply
15 the West Lothian question that's agitating it. Is it in
16 your view an urgent issue to be tackled, or something we
17 have to live with and see if it goes away?

18 LORD ROBERTSON OF PORT ELLEN: Well, I think we have to live
19 with it for the reasons that I outlined. If you try to
20 tinker with the system to sort this particular anomaly
21 out you will create new anomalies which will place
22 greater strain.

23 I cannot scientifically say what English opinion is,
24 although I was in the Labour government when attempts
25 were made to introduce some form of devolution to the

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1 English regions. An experiment that failed, and I have
2 watched the experience of the mayoral project basically
3 self destructing over the last couple of weeks.

4 I know from anecdotal evidence, and from my own
5 experience, that the resentment in England about
6 Scotland is certainly going, but it tends to be about
7 visible things rather than invisible things. Voting in
8 the House of Commons is by and large invisible, but
9 there's a resentment about free prescription charges,
10 free toll bridges and especially about free tuition and
11 free care for the elderly.

12 Now, I think that that is genuine, it manifests
13 itself in quite a number of ways, even to personalities
14 like me. But it's rarely said: you Scots landed tuition
15 fees on the English system, or you Scots -- well it
16 would not be the NHS reforms because there was only one
17 Tory MP in Scotland, so it was hardly opposed by that
18 but there were quite a few Liberal MPs as well. So the
19 resentment exists, but it manifests itself in concrete
20 issues rather than in the procedures of the House of
21 Commons. I hold the view that if you try to sort of
22 change that, you throw up a whole series of other
23 anomalies.

24 THE CHAIR: Would you say then, without trying to tinker
25 with the procedures of the House of Commons, we ought to

1 be finding a way to make clear what the real situation
2 is? Now, the real situation is often affected
3 indirectly if there is a bill which is an England-only
4 bill but its effects financially will work through to
5 the block grant. They work through the appropriation
6 process, they may not be direct but some bills will have
7 an effect on the block grant and others will not.

8 One of the ways of perhaps allaying English
9 apprehensions is to be a little more upfront about
10 devolution and its effects on the House of Commons. If
11 there is a bill which is England-only and has an effect
12 on the block grants to Scotland, Wales and
13 Northern Ireland, we may say: Scottish, Northern Irish
14 and Welsh members are not to vote. But if we do that we
15 also need to tell them why they are not voting, that it
16 is an England-only bill and that we have a good process
17 for working that out and making it clear.

18 Also we ought to say on the face of a bill that this
19 bill, though it is England-only, has actually got some
20 potential effects on the block grant. So there's two
21 things: England-only bills, and bills which actually may
22 not be England-only, but may affect the block grant.

23 That would not contradict your approach?

24 LORD ROBERTSON OF PORT ELLEN: This is one of the problems
25 and I think you, as a former clerk of the House know

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1 only too well that bills cannot really be so tightly
2 drawn they would not have implications for the United
3 Kingdom as a whole. So you could, say have an English
4 Grand Committee that looked at bills that were
5 ostensibly about English affairs, but it would have to
6 come back to the House of Commons at the end of the day.

7 That's where the resentment about the Scots getting
8 things at the moment by some of the English, is mirrored
9 by the poll tax, the community charge that was
10 introduced for a year in Scotland before it was moved on
11 to England and Wales. Actually, it's a bit of a
12 perverse thing, they had a year in incubation to realise
13 that it was a disaster, but they still decided to impose
14 it on England as well, where the whole thing came apart.
15 There was a lot of resentment at that, but I think it
16 was part and parcel of being an untidy constitutional
17 arrangement.

18 The answer to the West Lothian question is of course
19 absolutely simple, and that is a written constitution
20 for the United Kingdom with the powers delineated and
21 with some form of regional government in England that
22 meant that England, with 85 per cent of the population,
23 was not going to dominate over the rest of the country.

24 But that's not on the horizon.

25 THE CHAIR: Nobody wants it.

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1 LORD ROBERTSON OF PORT ELLEN: No.

2 THE CHAIR: One of the points you make about tinkering with
3 the procedure of the House of Commons is: we do not want
4 to create two classes of member. I think that must be
5 self evidently true. Although, I must say it seems to
6 me it's possible, using the existing, and as you know
7 incredibly elaborate, machinery of the House of Commons,
8 as now is, to set up an English committee, let's say,
9 without calling it an English committee. You just call
10 it, for example, a report committee and you only put
11 English members on it.

12 So I am not sure that can be a conclusive objection
13 to the rearrangement of the business to isolate English
14 business in the House. But there are other difficulties
15 which stand in the way of balancing - by letting the
16 English talk about their own bills and having a UK lock
17 at the end of the day. However you work it out, would
18 you be happy with that general principle?

19 LORD ROBERTSON OF PORT ELLEN: That would work obviously,
20 but at the end of the day the Scottish, Welsh and
21 Northern Irish MPs would still be voting on it. So your
22 report committee made up of English members can
23 scrutinise, it can decide, it can have votes and it can
24 produce an outcome, but it still has to report to the
25 House of Commons where the West Lothian question pops

1 its head up again.

2 It might be a better way of looking at some of these
3 schemes but then that is not what the problem really is.
4 It's not the scrutiny, it's basically the final vote on
5 execution of the policy into practice.

6 THE CHAIR: The difficulty of course is in this balance,
7 I agree with you that as long as all UK members have the
8 final lock, that would be an important part of the
9 balance. The trouble is when you devise systems for the
10 procedure before third reading, would you not say that
11 a whip, in a corner, would come up in about five minutes
12 with a little motion saying "notwithstanding", and
13 a government majority would overturn all the elaborate
14 arrangements made for English Votes for English Laws.

15 LORD ROBERTSON OF PORT ELLEN: Yes, exactly. Then as I say,
16 you mention the House of Lords.

17 THE CHAIR: I was going to come to that.

18 LORD ROBERTSON OF PORT ELLEN: Yes, so that's the problem.
19 The dilemma is for somebody elected on a formula
20 whereby -- even if you reduce the number of Scottish MPs
21 even further than they are just now, even if you reduce
22 the Welsh MPs because they now have legislative power,
23 an unbalanced parliament can still produce the majority
24 that depends on these people, and a Prime Minister
25 cannot get through his legislation for 80 per cent of

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1 the United Kingdom is high and dry really.

2 THE CHAIR: This is what I want to come to, and I think it
3 brings in the House of Lords as well. On the one hand
4 as you say a Prime Minister who cannot deliver swathes
5 of legislation for England is in trouble. The counter
6 argument expressed to us is: well, that's politics, you
7 have to negotiate so that the Prime Minister gets as
8 much as he can and the Opposition get as much as they
9 can. That's a new kind of House of Commons.

10 LORD ROBERTSON OF PORT ELLEN: It is and it is the beginning
11 of the end of the United Kingdom as we know it. It's
12 a very odd United Kingdom but it's survived for
13 300 years, unlike so many other countries and so many
14 other constitutions. It does it because it sort of
15 adapts, moves and shifts but it is certainly not neat
16 and tidy and I have quoted Garret FitzGerald, maybe
17 other people have said it as well, "It works in practice
18 but not in theory."

19 I have played my part in all of that going through
20 the 21 years that I was in the House of Commons, making
21 it difficult for the governments to operate at times as
22 well. But if we really believe that we want the United
23 Kingdom to stay together, we are going to have to live
24 with some of the anomalies, as we have lived with them
25 in the past.

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1 I mentioned the Northern Ireland members when
2 Stormont had legislative power. Nobody said that this
3 was a huge difficulty when they voted with the Tory
4 party and practically every division that took place --

5 THE CHAIR: Harold Wilson did.

6 LORD ROBERTSON OF PORT ELLEN: On one point. Steel
7 nationalisation, the one where he complained about that.
8 But it never really became -- maybe because Tam Dalyell
9 was in his infancy then.

10 THE CHAIR: The difficulty about that is that you are
11 straining the link between taxation and representation.
12 If Scotland is underrepresented at Westminster, then
13 it's underrepresented on the vote on the second reading
14 of the Finance Bill.

15 Do you see what I mean? If there's a devolution
16 discount and you cut Scottish members down, then comes
17 along the Finance Bill, the voice of Scotland through
18 these members, and its interests, isn't as fully
19 represented as it would be for other parts of the UK.
20 Not only England.

21 LORD ROBERTSON OF PORT ELLEN: It may be, but I do not think
22 people have really thought that one through. I do not
23 see it being an issue. The elephant in the room, the
24 elephant in the union, is England, which is 80 per cent
25 of the population. So that's why the unity of nations,

1 has sort of held together, because it was certainly --
2 it was not in any way neat and tidy at all.

3 We make it slightly more untidy by creating
4 a legislative parliament in Scotland and now
5 a legislature in Wales as well. But, you know, it's
6 the very untidiness and living with the anomalies that
7 has actually kept our country together. I think
8 tinkering with it would be an even bigger danger than
9 the referendum that's scheduled for 2014.

10 THE CHAIR: Can I finish by asking a question which I think
11 has, I hope, a more positive resonance for you: here we
12 have four legislatures, they are all interconnected in
13 their legislation, but at that level, they do not speak
14 to each other very well. Robert Hazell has suggested
15 that really there ought to be more coordination, more
16 talking, between the four legislatures, into what he's
17 called a stronger sense of legislative partnership
18 between the legislatures.

19 So if you have more draft bills, then maybe the UK
20 parliament asks the Scottish Parliament for its views on
21 draft bills. Perhaps you could even have a joint
22 committee -- I do not know whether this was a good idea
23 or not, we were discussing it this morning with another
24 witness -- to look at devolution issues, look at
25 legislative consent motions, look at all sorts of

1 developments within the devolved relationships between
2 the legislatures and just tell the Houses what's going
3 on. Is that a thing worth thinking about?

4 LORD ROBERTSON OF PORT ELLEN: Very much so. I strongly
5 believe that that was the missing dimension after
6 devolution took place. I think Prime Minister Blair
7 lost a degree of enthusiasm once the legislation had
8 been passed. He was committed to doing it, quite
9 pleased and proud that it had been done, but basically
10 he moved on to other things, solving Northern Ireland,
11 Kosovo and the rest of it.

12 I remember having a discussion with
13 Douglas Alexander, when he was Secretary of State for
14 Scotland and he was saying: what are we going to do
15 about this tension? That was a Labour administration up
16 here, you know, seemingly sort of on a different planet,
17 to the UK government. I expressed a view at that time
18 that the consultation really needed to be enshrined in
19 formal processes, you know.

20 The Council of the Isles and all of that was seen as
21 almost dispensable, if you were busy doing something
22 else you didn't bother going to it. That's been carried
23 on by Mr Salmond as well: we do not deal with that sort
24 of thing. So there needs to be a structure within which
25 these things happen routinely and regularly, with

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1 a committee structure to do that. That's the way
2 I think we can knit things together, until eventually
3 there's a form of regional devolution in England and
4 Wales where it might become even more urgently necessary
5 to do it.

6 THE CHAIR: I had in mind something not focused on the
7 politics, but on the legislation of a session.

8 LORD ROBERTSON OF PORT ELLEN: I think you are right, it's
9 both to do with the issues and the legislation, but also
10 with the politics. People have to recognise that we
11 live in a completely different country now; the union is
12 a different place to what it was 20 years ago, and it
13 needs to be reflected in a partnership and not with
14 little islands all doing their own thing without any
15 regard for others.

16 I think that might get over some of the resentments
17 that people have in various parts of the country,
18 looking, out of context, at some of the decisions
19 undertaken by the devolved legislatures.

20 THE CHAIR: Thanks. Yvonne?

21 PROFESSOR YVONNE GALLIGAN: Thank you, chairman. Good
22 afternoon Lord Robertson. It seems from what you have
23 been saying that clearly you present the current
24 arrangements as being messy, as being a little bit
25 asymmetrical, but nonetheless everybody lives within

1 this messiness. It seems that you are suggesting that
2 we continue broadly to live with this messiness because
3 the result of tinkering with it might be opening up
4 further cans of worms in relation to the union itself.

5 Yet part of the reason for the union's existence, as
6 you say, is its ability to adapt the whole time, and
7 maybe our task is in fact to find a small form of
8 adaptation of a practice that will in fact continue to
9 provide part of the sticking plasters that keep all the
10 union together. What do you think?

11 LORD ROBERTSON OF PORT ELLEN: If you could find an answer
12 to the West Lothian question, then fine, it's like the
13 Schleswig-Holstein question as well. I am not opposed
14 to it and I am not saying the status quo is magical and
15 wonderful; it's not. I just think -- my own view is
16 there's less of a broad resentment about the way in
17 which Scottish MPs vote than there is with the product
18 of the legislature.

19 You do not hear -- if you ask people what the
20 West Lothian question is, they will not know about it.
21 If you ask Conservative MPs, they will say that the
22 formula the Scottish MPs can vote on English matters,
23 but not the other way round. But I doubt that among the
24 general public that's the biggest issue of all.

25 Even if you sorted it, you had an English Grand

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1 Committee and it was going to work and not create
2 further anomalies, I doubt whether that would be an
3 answer that would be easily sold on the proverbial door
4 steps; it needs something to explain why, within
5 particular block grants, different decisions can be
6 made.

7 PROFESSOR YVONNE GALLIGAN: So then it seems that some
8 element of transparency about the process by which
9 decisions are made and result in differential outcomes
10 in the different countries might help, and make
11 communicating that process or communicating that
12 decision making process to the general public a key
13 element in this formula that we are seeking to find.

14 LORD ROBERTSON OF PORT ELLEN: Yes, I think that's part of
15 the issue; people are not really taken up with
16 constitutional issues. There's a bit of an argument
17 going on just now about independence in Scotland, but
18 that's unusual and it will probably drift away after
19 this immediate frenzy has taken place. But they see
20 things -- the tuition fees at university, especially for
21 those who are in the age group of children going, is
22 something people feel very, very strongly about. The
23 fact you can come from Latvia and have your fees paid
24 but you can not if you are from England is another point
25 of resentment. But you know we have a separatist party

1 in control in Scottish Parliament and these things are
2 not being done solely in the interests of the Scottish
3 people. A lot of the banging of drums is designed to
4 make the English even more resentful about what is going
5 on because the more the English say: why don't the Scots
6 push off? The better the sort of independence vote
7 might appear as well, so there's an element of
8 provocation involved in some of these things.

9 But there is not a counter argument to it, as to the
10 decisions that are being made. Free prescription
11 charges in Wales and Scotland; there's only a tiny
12 percentage of the population that now pay prescription
13 charges. They took the tolls of bridges, and that was
14 done by the previous administration, even before this
15 one got in and free care for the elderly is something
16 that's going to be a major financial crisis for the
17 Scottish government in any event, to do with that. But
18 I think perceptions, as ever, are often worse than the
19 reality.

20 PROFESSOR YVONNE GALLIGAN: So in a way it's perception
21 that's driving English public opinion on this question
22 rather than possibly a real -- it's not an issue of
23 a democratic deficit or democratic deficiency.

24 LORD ROBERTSON OF PORT ELLEN: It's difficult to tell, and
25 it's unwise for me as a Scot to say what the English

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1 think, but each time the English are all for something
2 that would give more local power, they seem pretty
3 unenchanted with the prospect. So they seem content to
4 leave the union parliament as their domestic legislature
5 and that regional government, mayors -- and directly
6 elected mayors reaches nothing there.

7 So the resentment may be anecdotal and it might be
8 in the saloon bars and among people, especially with
9 kids going to university, but it does not manifest
10 itself in a decision to find a structural change. So
11 that's why I am saying the great problem -- tinkering
12 with the procedures of the House of Commons might not
13 necessarily sort it, they would just -- yes, the
14 Conservative MPs might think this is justice and this is
15 better, but the outside world, I do not think, would
16 really be bothered.

17 I spent 21 years in the House of Commons and
18 eventually I formed a great regard for the procedures of
19 the House of Commons and the people like Sir William who
20 supervised over it, the Cartesian logic that plays on
21 that and I conducted a campaign during the ratification
22 of the Maastricht Treaty --

23 THE CHAIR: I remember.

24 LORD ROBERTSON OF PORT ELLEN: -- which took me into the
25 heart of that Cartesian logic in order to try and

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1 frustrate the government's ability to get the treaty
2 ratified without that type of social chapter.

3 But that put me into a very rarefied little group of
4 people who both understood what was going on and cared
5 about what was actually going on. When Betty Boothroyd,
6 the Speaker, was writing her memoirs she came to me to
7 ask about this amazing amendment we got for the social
8 chapter at the end; the so-called "Semtex amendment"
9 which actually led to the first defeat of the
10 Conservatives in 14 years. And where I had six pieces
11 of paper in my pocket, sitting beside John Smith with
12 the different responses to whatever the government were
13 going to do. So the government were defeated on the
14 Thursday and won a vote of confidence on the Friday, but
15 frankly the point of saying this is when she asked me to
16 explain it to her to put it in her book, I could not
17 remember.

18 Maybe Sir William remembers the precise formula, but
19 I doubt the outside world cared. The government were
20 defeated, that impressed my shadow cabinet colleagues,
21 my parliamentary colleagues and as a consequence I got
22 elected to the shadow cabinet and given responsibility
23 for Scotland, which was one hell of an award I can tell
24 you.

25 PROFESSOR YVONNE GALLIGAN: There are many interesting

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1 aspects to that story. But I think one of the
2 interesting points is how the workings of a small select
3 group of people actually produced an outcome that
4 affected very many people. In a way, to some extent,
5 this is what we are tasked with; finding some kind of
6 small solution, with the aid of many expert minds, that
7 will actually have some kind of an effect on a larger
8 group of people, even though they do not see the
9 connection.

10 LORD ROBERTSON OF PORT ELLEN: I accept that, absolutely,
11 and if we could find a formula to do it. I think that's
12 what Sir William was saying, about having some structure
13 whereby the various elements in the United Kingdom
14 actually come together to talk about it; talk about the
15 implications that certain decisions would have on other
16 parts of the kingdom.

17 That is a missing dimension to the system that I was
18 partly responsible for creating. We should have thought
19 that through, because by and large we got this -- we got
20 a scheme designed in Scotland, the Scottish
21 Constitutional Commission. I, through a process of
22 diplomacy, bullying and threats managed to get the
23 Labour party to accept it in its entirety. The only
24 bit -- the only bit of policy that had not been through
25 all the Labour party procedures and was taken, almost

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1 more or less from the Scottish constitutional convention
2 and put into law. But it sort of got left there in
3 terms of working, without us really looking at the
4 broader picture. But by that time I was in the Ministry
5 of Defence and Scottish Affairs had diminished in my
6 view.

7 PROFESSOR YVONNE GALLIGAN: Thank you.

8 PROFESSOR CHARLIE JEFFERY: Thank you very much, Lord
9 Robertson, good to have you here. That missing
10 dimension at the outset of the UK's territorial reforms
11 back in the late 1990s, set in motion, if you like,
12 something of a centrifugal logic, in which Scottish
13 politics has become more self contained, less referenced
14 by Westminster; Welsh politics is now moving more firmly
15 in that direction, Northern Irish politics has long been
16 like that.

17 Is there still scope to fix that and bring in a
18 fuller UK-wide vision, or structure around politics in
19 the different parts of the UK?

20 LORD ROBERTSON OF PORT ELLEN: Yes, if people care enough
21 about it, then, yes, it's possible, I think you can have
22 a structure -- you have the Council of the Isles, so
23 this is something to build on, I think it could be more
24 than it is and it should be more important than it is at
25 the moment. I think that's very important part of the

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1 debate that is now going to take place, the independence
2 debate, triggered by this majority the SNP have in the
3 parliament, which was never envisaged by those of us who
4 actually designed the electoral system, I have to say;
5 the people confounded us with that.

6 But I think you can create structures that would
7 start to stop, as you say, the centrifugal forces from
8 pushing out the whey (?) and start bringing them back in
9 because I think there's a big prize for keeping the
10 union invigorated and not simply atrophied in its
11 present form.

12 PROFESSOR CHARLIE JEFFERY: You would see certainly
13 a stronger version of addressing the West Lothian
14 question as another centrifugal element which would
15 undermine that prospect?

16 LORD ROBERTSON OF PORT ELLEN: Yes. I think some of the
17 more superficially attractive solutions would really
18 start to produce a new force that I think would divide
19 it. We have a separatist party in power in Edinburgh
20 just now. I think, had we not moved down the route of
21 devolution, with the kind of parliament in Scotland,
22 there's no doubt in my mind we would have reached that
23 point quite some time ago, and maybe beyond it as well.
24 I think we have still got to be careful.

25 So I think when the new coalition came into power,

1 quite a number -- I have heard it said -- of
2 Conservative MPs saying: well, let Scotland go, then
3 there will be a permanent Conservative majority in
4 England. So we get rid of these bothersome Scots, save
5 a bit of money on the Barnett formula and wouldn't that
6 be wonderful? But it didn't take Prime Minister Cameron
7 very long to realise that that had huge implications,
8 both for him and for the Conservative party as well as
9 for the nation itself.

10 PROFESSOR CHARLIE JEFFERY: Our Chair mentioned earlier
11 other witnesses who have said that an approach to the
12 West Lothian question establishing some system of
13 English Votes for English Laws would be challenging but
14 that kind of challenge would be one simply of politics
15 and lots of other places have difficult political
16 structures to negotiate and parties somehow come
17 together and produce adequate solutions.

18 I am wondering whether the political culture,
19 certainly the political culture of Westminster, really
20 lends itself to that kind of politics?

21 LORD ROBERTSON OF PORT ELLEN: What, self-denying
22 ordinances?

23 PROFESSOR CHARLIE JEFFERY: Well the politics of -- if you
24 had English Votes for English Laws, the only scenario
25 where this really has an effect is when there's a Labour

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1 UK majority and a Conservative majority in England
2 therefore the supposition is that the two majorities, ie
3 Labour and the Conservatives, would negotiate effective
4 solutions to English-only matters.

5 LORD ROBERTSON OF PORT ELLEN: In a ideal world you could do
6 that, but we do not live in an ideal world and party
7 politics -- and the stakes being so high with some of
8 the issues concerned. Essentially the tuition fees were
9 introduced by the last Labour government and effectively
10 the majority was such that it would be said to be
11 Scottish and Welsh MPs who determined that. But that
12 was an absolutely central feature of the Labour
13 government's policy at that time. Would you just do
14 a deal and say we are going to abandon it because we do
15 not have a majority in England?

16 PROFESSOR CHARLIE JEFFERY: You could probably say that was
17 an issue on which the Conservatives probably had
18 a similar underlying policy preference --

19 LORD ROBERTSON OF PORT ELLEN: Underlying, but it was quite
20 deep in underlying.

21 PROFESSOR CHARLIE JEFFERY: -- and should have had the
22 responsibility and maturity to engage with the
23 government and produce a commonly accepted solution.

24 But is the point that our system produces an
25 adversarial logic that that's actually hard to envisage

1 in practice.

2 LORD ROBERTSON OF PORT ELLEN: It's a bit unrealistic to
3 assume that that would actually work. Ours is very
4 adversarial. Even with the coalition it's still
5 adversarial, so building something on that basis, you
6 could say yes, in circumstances if there was a pledge by
7 members. The problem comes when there's a pledge by the
8 party leaders, the party organisations, but it would
9 depend very much on the circumstances there as well.

10 Again going back to Maastricht, the parties were in
11 favour of the Maastricht Treaty, all -- the second
12 reading vote had a majority of, what, some 200. But,
13 you know, 26 Conservative MPs were at my disposal; every
14 time I could get the Liberals to vote with the Labour
15 party on anything, 26 Conservative MPs would answer the
16 telephone and be in the lobbies with me. That was
17 a year after John Major became the Prime Minister. So
18 normal rules can be suspended.

19 THE CHAIR: The majority on third reading was one, was it
20 not? The Maastricht bill?

21 LORD ROBERTSON OF PORT ELLEN: No, it was fairly hefty
22 because he tied it to a vote of confidence, the
23 rebellion collapsed at that point. The defeat was on
24 the Thursday night and one of the bits of paper was he
25 has going to call for a vote of confidence which was

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1 a nuclear option, but ...

2 PROFESSOR CHARLIE JEFFERY: Thank you very much.

3 SIR STEPHEN LAWS: Lord Robertson, thank you very much for
4 coming. Can I pursue that a bit? You have identified
5 there might be a sense of resentment amongst the English
6 and the evidence and research we have seen suggests
7 there might be at least a sense of unfairness about
8 this. In answer to Professor Galligan, you agreed that
9 it would be a sense of unfairness about a perception,
10 and it's a perception about what might happen rather
11 than what is happening.

12 What is suggested to us is that some inhibition,
13 rather than a prohibition, might meet that - in the
14 sense that if it were clear, when an issue arose, that
15 a government had decided to use non-English members to
16 overrule the view of the English members in relation to
17 an English matter, then that would impose a political
18 inhibition on the government, on the basis that any
19 government needs to win votes in England and it would
20 not willingly, certainly not repeatedly, seek to
21 override English opinion. Would you agree that would
22 amount to an inhibition?

23 LORD ROBERTSON OF PORT ELLEN: Yes. That inhibition is
24 there anyway and I think most Prime Ministers are quite
25 conscious of that, and therefore would not push it to

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1 the point where there was a sort of huge English
2 rebellion because something alien was being imposed upon
3 them which the English MPs would not vote for. That's
4 political reality, and in a way that's the safeguard.

5 So the West Lothian question rumbles along, but it's
6 not the subject of daily conversation by people because
7 there has not really been a case where a Labour
8 government has tried to impose something on England that
9 led to such bitter resentment that people said: this has
10 to be changed. It might affect some Conservative MPs
11 who have this perception that is the case, but I think
12 a Labour Prime Minister would be very wary, as you say,
13 because they need the votes, of upsetting people.

14 SIR STEPHEN LAWS: If the problem is that perception, would
15 it be more apparent to the people that currently feel
16 a sense of unfairness about it, if some mechanism were
17 devised to ensure that a government that did want to
18 override the views of English members, clearly had to do
19 that after the views of English members had been
20 separately expressed?

21 LORD ROBERTSON OF PORT ELLEN: That could be a way, that
22 brings us back to an English Grand Committee. We had
23 a Scottish Grand Committee, under Michael Forsyth who,
24 when he was Secretary of State for Scotland invested
25 a huge amount of capital in this travelling circus that

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1 was the Scottish Grand Committee; I saw bits of Scotland
2 I had never seen before. But it did not answer the
3 question of genuine public opinion in Scotland.

4 But, yes, you could do that but it would still, at
5 the end of the day, be the subject of a vote in the
6 House of Commons with the government putting its
7 majority behind it. But the legal reality is that if
8 English MPs quite clearly resented what was happening,
9 felt it was an alien structure being imposed upon them,
10 the Prime Minister on third reading or -- third reading
11 or report stage, would just, for political survival's
12 sake, not want to push it.

13 So again I think you are talking here -- common
14 sense politics suggests that people are pretty careful
15 about what they do. The poll tax might be an exception
16 to that, but that was reckless, both north and south of
17 the border. But, by and large, political survival
18 skills will determine that it's not going to be used
19 outrageously against a sort of bitterly opposed English
20 election.

21 SIR STEPHEN LAWS: A question would be whether a mechanism
22 of that sort - that made it clearer that a government
23 was overruling the English, or required a government to
24 explain why it was doing so - whether that -- first of
25 all, would strengthen the existing inhibition? And

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1 secondly whether that would make the existence of the
2 inhibition more apparent to people outside parliament
3 who are not conscious of it at the moment?

4 LORD ROBERTSON OF PORT ELLEN: It might. That might be one
5 of the prices you would pay. So I would not be opposed
6 to an English Grand Committee. The Scottish Grand
7 Committee had its function as well, it heard issues and
8 actually the Forsyth model of travelling around did take
9 it to a slightly wider audience, so I would not object
10 to that, as long as the House of Commons, at the end of
11 the day, had the decision to take.

12 But I go back, your Commission will have to wrestle
13 with what you do with the House of Lords, reformed or
14 unreformed. There's a lot of Scots in the House of
15 Lords and they are not geographically defined so you
16 could --

17 THE CHAIR: They are not representative either, so in
18 a sense --

19 LORD ROBERTSON OF PORT ELLEN: Far from it!

20 THE CHAIR: I mean they do not represent a constituency, so
21 there's a slightly different case with the Lords.

22 LORD ROBERTSON OF PORT ELLEN: But if the reforms go
23 through, they will, some of them -- the 80 per cent that
24 will elected will then be in that position.

25 SIR STEPHEN LAWS: One of the things that has caused concern

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1 for some of the people who have spoken to us is the
2 possibility that, if you had a really strong rule about
3 English Votes for English Laws in the House of Commons,
4 that would leave it to the House of Lords to take
5 responsibility to take the UK view; to take into account
6 any effects on other bits of the United Kingdom of
7 something being done for England. That would give more
8 legitimacy to, perhaps, an unreformed House of Lords in
9 relation to UK matters.

10 LORD ROBERTSON OF PORT ELLEN: Yes. The House of Lords, if
11 it so wished, could end the anomaly tomorrow by the
12 English members, who must make up a majority of the
13 House of Lords, deciding that it was a constitutional
14 outrage. So at least they could delay it for a year if
15 this government in the UK was opposing something on
16 England.

17 SIR STEPHEN LAWS: To be clear, you are not advocating that
18 as the answer?

19 LORD ROBERTSON OF PORT ELLEN: I am not, but it's
20 a theoretical possibility you have to have. The very
21 fact they do not, and as far as I know never have, made
22 that argument in the Lords is an indication that it's
23 not really the mechanics here that is the problem; it's
24 outcomes.

25 SIR STEPHEN LAWS: You could say it was a risk that might

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1 require us to look at it and come up with something that
2 would forestall it.

3 LORD ROBERTSON OF PORT ELLEN: I frankly do not think
4 anything is going to happen with the House of Lords
5 reform anyway, so I would not work on the basis of the
6 80/20 per cent. Everyone is in favour of House of Lords
7 reform, but not this one or the last one or the next
8 one. But we are all in favour of reform. I'm in favour
9 of reform, I will be voting with the government on its
10 plans, but I do not think most of the government's side
11 will be.

12 THE CHAIR: Thank you. Thank you very much indeed Lord
13 Robertson for coming along and assisting us, we are very
14 grateful to you.

15 LORD ROBERTSON OF PORT ELLEN: Pleasure, I wish you well and
16 look forward to seeing the outcome.

17 THE CHAIR: We will send you a copy.

18 (5.05 pm)

19 (LORD ROBERTSON OF PORT ELLEN withdraws)

20 (5.06 pm)

21 Evidence from MR HENRY MCLEISH

22 THE CHAIR: Mr McLeish, thank you very much for coming.

23 MR HENRY MCLEISH: Thank you very much for the invitation.

24 THE CHAIR: You know what we are about, the famous
25 West Lothian question in the context of the procedure of

1 the House of Commons.

2 One of the most appreciated consequences of --
3 parliamentary consequences of the devolution settlement,
4 I think, has been legislative consent measures,
5 Sewel Motions. How well did they work when you were
6 First Minister? Were they a trouble to you, to the
7 government?

8 MR HENRY MCLEISH: No I think they worked well, despite the
9 administrations and the three types of administrations
10 you have had since 1999. I always think that part of
11 the devolution journey is about dealing with
12 practicalities as they arise and emerge. So therefore
13 I think that as a mechanism, in my judgment, has worked
14 well.

15 THE CHAIR: I perhaps should know this, but occasionally is
16 it true that governments in Holyrood fail to carry
17 a Sewel Motion, or are they all, after discussion,
18 agreed to?

19 MR HENRY MCLEISH: Well, my knowledge of the latter part of
20 the administration is not as clear as they might be but
21 I think essentially there was never a fuss. One of the
22 great benefits for the first two Labour/Liberal Democrat
23 administrations was that you can have all the rules in
24 the world and all the constitutional niceties, but
25 a phone call often overcomes many problems.

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1 So in terms of Blair and Brown being at Westminster,
2 that eased the development of devolution in a way that
3 most people cannot quite I think appreciate. So
4 therefore I do think that it worked well, I do not think
5 there was many, many problems. Of course, there's
6 always arguments between the two parliaments about
7 a variety of things, but overall I did not see any
8 serious issues.

9 THE CHAIR: Thank you. Changing the tack slightly, there's
10 a generally received opinion - it is not unanimous -
11 that there is growing concern among the English
12 electorate that Scotland is enjoying many benefits for
13 which the English taxpayer is paying. That seems to be
14 one of the things driving the rise of popularity of
15 English Votes for English Laws, leave aside the more
16 radical solutions. English Votes for English Laws might
17 involve changes to the procedure of the House of
18 Commons, to balance English votes at some stages, with
19 UK votes at second and third reading, start and finish.

20 Suppose we found a good way of doing that, do you
21 think that the man in the street, even the man in the
22 English street, would pay the slightest bit of
23 attention? In other words, behind that, is the
24 West Lothian question not really an irritation at all?

25 MR HENRY MCLEISH: Some people think the West Lothian

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1 question can't be answered until one of two things
2 happen: one, Scotland is independent or you have some
3 sort of quasi-federal system. I think the danger with
4 Westminster and, with the greatest respect, the debacle
5 about the restructuring of the Lords is a classic
6 example that, in my judgment -- after being in the House
7 for 14 years and being in politics for 30 years --
8 Westminster does not do constitutional well. My fear
9 about the English Votes for English Laws is this: you
10 will be trifling, you will be tinkering, looking for
11 technical solutions to a problem which is essentially
12 political and constitutional.

13 Again, Sir William with respect that Scottish
14 taxpayers also pay for the services that we enjoy.
15 I think what struck me is that if devolution means
16 anything it means difference and the privilege, although
17 I think getting a cheque for £30 billion does not help
18 and hopefully we will move further than that. But
19 actually devolution means difference that we can do on
20 education personal care. Sometimes I think that what
21 happens is that maybe English voters would actually like
22 some of the services and, the product of my judgment,
23 better government. But it does provide at Westminster
24 an irritation factor that can be stirred up and, without
25 being partisan in any way, I think it effects all

1 parties at Westminster.

2 So I think Westminster has to be very careful how it
3 interprets and, for example, I am concerned in England,
4 not in Scotland, about extremes of politics; about
5 certain parties that masquerade, but are essentially
6 fascist parties, working on the fringes, building on
7 disillusionment, disenchantment and I think trying to
8 monopolise the Union Jack, Englishness, for what it's
9 worth.

10 I think that's one issue. I think the second issue
11 on the practicality of English Votes for English Laws
12 I do think it would be short term and it might look okay
13 but I think it would be sheer folly to take some of the
14 suggestions that have been made about splitting the
15 bills up, having the second reading, having the report,
16 et cetera, because quite frankly I hope Westminster --
17 somebody will realise that constitutional change,
18 devolution is also about them, not just about the
19 territories of the UK which I think have done really
20 well out of the deals we have in 1997 under the Blair
21 government.

22 THE CHAIR: To take up that very point Mr McLeish, do
23 I interpret you right in saying what is missing is some
24 kind of -- perhaps enthusiasm is the wrong word - some
25 kind of openness to the devolution settlement at

1 Westminster?

2 MR HENRY MCLEISH: Sir William, I entirely concur with that
3 point because I think it's easy -- you maybe see this
4 when you are out on your travels, that there's a very
5 different perspective about the world, there is
6 a different world view here. It does not mean everybody
7 wants to be independent, or devo max or devo plus. The
8 train has left the station at Westminster, it's not
9 a return journey and we are going to continuously
10 evolve.

11 My concern is, if you look at the English Votes for
12 English Laws issue, it's a short term expedient. I had
13 the privilege of Tam Dalyell sitting on my shoulder for
14 110 hours in the bill stage of the Scotland Act in 1998
15 and 1997. Tam, when he coined that way back in 1979,
16 when he talked about that, he knew what he was talking
17 about but. My fear and frustration is that Westminster
18 has not quite got -- and I think when I speak to MPs of
19 Westminster from all parties: look, it's Scottish
20 business, we have enough to do without this irritation
21 of you wanting to build another wall and other things.

22 But, at the end of the day, I fear what happens at
23 Westminster may fuel nationalism in a way that could not
24 happen in Scotland if wrong decisions are made. Two
25 points about the -- forgive me for going about this.

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1 Two points about the English votes one. People tend to
2 forget that the Barnett formula and the consequentials
3 are actually worked out in all the committees of the
4 House. Therefore, if you exclude Scottish members from
5 exclusively so-called English business, it's still going
6 to have a financial impact. Therefore one could argue
7 that Scottish MPs should vote. The second point is the
8 constitution, the House procedures -- actually,
9 Westminster is still an unity factor in the United
10 Kingdom because we get -- MPs from every part go to it.

11 I just fear that if you start to decide there are
12 second class MPs: you can vote on this, pressure on the
13 Speaker to make judgments, then you'll send a powerful
14 message to Scotland saying: hey, life is being made
15 uncomfortable for Scottish MPs to placate the English.
16 It may help Alex Salmond, or it may help those who want
17 to go much, much further, but I don't think it helps or
18 cements -- my personal view, the union transformed will
19 be a union of purpose in the years ahead.

20 THE CHAIR: I take all this on board. What I had in mind
21 was something which might have a resonance on that
22 scale, but the work of which was rather more domestic
23 and simple.

24 We began by talking about legislative consent
25 measures; the House of Commons never sees them and never

1 knows that there's a system behind all of that. There
2 has been a suggestion by Robert Hazell that really what
3 we want, in his view, would be a stronger sense of
4 legislative partnership between legislatures, some
5 standing organisation which at Westminster informed
6 Westminster of the legislative consent motions, of the
7 problems, if there are any problems, raised with the
8 Barnett formula; simply looked at and reported on the
9 working of the devolution settlement. Not its politics,
10 its practicalities.

11 MR HENRY McLEISH: I think that would have more merit in the
12 short term because I think all of these things are
13 essentially short term pending bigger solutions.
14 Because one of the points -- and this looks like I am
15 just being on the attack about Westminster; it's a great
16 place to be and a great privilege to be there, so please
17 bear that in mind -- but there is not a sense at
18 Westminster that devolution means anything other than
19 three pieces of legislation that were passed in 1997.

20 Accepting that, anything that could be done to
21 actually bring the parliaments and the governments
22 together would be helpful and, again without being
23 patronising, is a learning experience for Westminster.
24 The problem is, as you well know more than most, that
25 that combination of exceptionalism, that I felt UK

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1 Westminster parliament always feels, that question of,
2 "Look, devolution is for other territories not us", and
3 just that general atmosphere it's created means that we
4 have, in my judgment, for 13 years made absolutely no
5 progress -- "no" I'm slightly emphasising for effect --
6 no progress on the point you have just made in dealing
7 with a greater understanding.

8 Forget the politics; forget devo max, devo plus or
9 where we might be in two years' time, but certainly that
10 might help as an education tool and as a practical way
11 forward.

12 The other issue I would say to you -- this gets into
13 probably Professor Jeffery's territory rather than
14 mine -- is all about this idea of shared power rather
15 than devolved power. Then you get into the point about
16 sovereignty, because along with exceptionalism the
17 Westminster parliament being sovereign means there is
18 a bit of disdain, a bit of contempt, a bit of -- in the
19 early days it was kind of toy town parliament, Scotland,
20 or some other disparaging remarks made. That has been
21 such a toy town parliament that has evolved, different
22 policies, different democracy, different ways forward,
23 and, if things go badly for the unionists, possibly an
24 independent Scotland, after 2014. Now, I do not believe
25 that will happen, I do not want it to happen, but it's

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1 just a measure again of all that period in which
2 Westminster has just stood aside, got involved in some
3 of the technical niceties, but actually in hard terms
4 about bringing the parliaments together -- and forgive
5 me if I make an aside point here since I have the
6 platform -- is that I'm astonished that this agonising
7 over the House of Lords made little progress over the
8 last ... if we clearly want to bind together the parts
9 of the union, including maybe parts of England, why
10 cannot that second chamber be recognised as a revising
11 chamber, not necessarily as a larger (?) chamber, but
12 reflecting every part of the United Kingdom. From what
13 I've seen, there's very little studies about using that
14 as a tactic to bring together territories that are
15 drifting, and if Westminster does not see the benefits
16 of using opportunities to bring them closer, then the
17 consequences might be considerable.

18 THE CHAIR: Thanks very much.

19 PROFESSOR CHARLIE JEFFERY: Thank you very much. Henry,
20 hello, nice to have you here.

21 I think you used the words twice now, "a bigger
22 solution", but you have not yet really told us what it
23 is. I have Google out here, which is a terrible weapon
24 to use in these circumstances, but you have been known
25 to use the F word, federalism, as some kind of bigger

1 solution, but I don't think you are talking about
2 federalism -- it's in a Holyrood piece a couple of years
3 ago -- in a way that many would envisage it. So what do
4 you mean by some kind of federal arrangement which might
5 provide the bindings, but also the opportunities for
6 self expression, for different parts of the UK?

7 MR HENRY McLEISH: The first point is to reiterate a point
8 I made before, that one of the options that could tackle
9 the question we are here to discuss is independence.
10 Because in a sense, although Alex Salmond will dress it
11 up in kind of monarchical, economic, social, cultural
12 unions or whatever, it will be a soft political cell,
13 but essentially it means independence as we know it: top
14 table in Europe, top table at the UN. That's one idea
15 that can solve all the problems of the unionists at
16 Westminster who do not want change.

17 The second point for me -- and after reading some of
18 your own work and some of Michael Keating's work --
19 there's a lot to be learned from in terms of Europe,
20 because this is part of our exceptionalism, we just do
21 not learn well from Europe, we just do not seem to be
22 interested.

23 If you look there at different relationships --
24 there's no perfect model you can transfer from any other
25 jurisdiction to the UK, accepting that. Secondly, I see

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1 a situation, after 13 years of devolution in Scotland,
2 where the issues of nationality and identity are in some
3 ways replacing that kind of affiliations through class,
4 through economic status, through different loyalties;
5 they are all breaking down.

6 Now, I would not like to see a politics dominated by
7 nationality and identity, but I think there's a halfway
8 house. I think the danger here is that, unless we get
9 a structure that accommodates that, then we will see
10 a further drift. But at the same time, I do not see any
11 particular problem of being part of the union of the
12 United Kingdom as long as it's transformed and changed
13 and is fit for purpose. That for me means they will
14 have to look -- somebody called it devo diversity, which
15 is the starting point. Devo max is more extreme, if you
16 want to use that term, in the sense that we can have an
17 option whereby, with the exception possibly of defence
18 and foreign affairs left at Westminster, everything is
19 here and you can get to the extreme point where we would
20 raise, in Scotland, taxes to pay for both domestic
21 policy and reserve, to use that term, UK policy.

22 My particular view is that that requires then to
23 acknowledge Northern Ireland, acknowledge Wales and
24 acknowledge Scotland and, despite our asymmetry as
25 a kind of current union, that we move towards some

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1 federated structure -- you are the expert, Charlie, not
2 me -- which would actually bind the union together,
3 acknowledge that we could have different sovereignties,
4 not one sovereignty at Westminster, Westminster would
5 have to become less exceptional, and we would have this
6 idea of shared power. If that could work, as is done in
7 other federal structures, as I said there is no ideal
8 model, that would take me more towards a solution, an
9 embryo, which captures what my perceptions have seen
10 over the last 13 years and what my fears are for the
11 next 13 years if we do not resolve it. Because I fear
12 if we are still talking about technicalities, then we
13 will actually have missed the big picture. I'm in that
14 spot.

15 The other point I would want to make is we have
16 possibly two years before a referendum. The unionist
17 parties currently are not interested one bit. Their
18 mantra is: defeat independence and then, subject to
19 a vague set of promises in manifestoes, after 2015/2016,
20 we might look at the second question.

21 So the immediacy of the referendum suggests to me we
22 need an alternative, and I think over two years we can
23 do that. Secondly, it also means that would make sense
24 for the union of the UK, but the on the only drawback,
25 relative to my previous answers, is I do not think

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1 Westminster is at all close to understanding that, even
2 to understanding the kind of political consequences of
3 the current devolution model.

4 PROFESSOR CHARLIE JEFFERY: To push you a bit further, what
5 might the governing arrangements for England look like
6 in that broader federal solution?

7 MR HENRY McLEISH: If we go back to the attempt in the north
8 east to have a kind of regional assembly, a lot of
9 people used that as some indication that England is not
10 interested. That was the most chaotic, haphazard,
11 underfunded, disfunctional campaign that the Blair
12 government ever ran. I think if you speak to John
13 Prescott -- I cannot give you John Prescott's answer --
14 he was at the middle of something there that nobody,
15 including Downing Street, wanted to win. So let's leave
16 that aside.

17 I think the real question you have asked is this: if
18 you have a country of 50 million, two of 2.5 million and
19 one of 5 million, then that's going to be very
20 problematic in the terms of the way you handle it.

21 On the other hand, there could be ways that could
22 work, because I think Sir William was asking about ways
23 you can share power and understanding. The other issue
24 then is to say that: let's get off cultural devolution
25 and identity devolution and nationality devolution and

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1 actually come back to hard economic aspects of
2 devolution or devolved policies.

3 Since the war, we have had different policies under
4 different governments, we talk about the regional
5 dimension. It seems to me that not far away from the
6 Scottish border, there's the north east, the south west,
7 West Midlands, there's the north west, and I think
8 there's a lot of identity there, not dissimilar to ours.
9 So I think in the long term there may be a way of, not
10 necessarily parliaments, maybe assemblies, but whatever;
11 you also have London to contend with -- but in the
12 immediate future, I come back to the idea of if
13 Westminster was up for it, to use that phrase, then we
14 could move towards a better shared understanding as
15 a way forward. My fear is that we are going to have
16 more time to do that after 2014 because none of the
17 parties are offering anything other than defeat of
18 independence.

19 PROFESSOR CHARLIE JEFFERY: I want to ask one more thing,
20 which is a very different thing, and which I think you
21 are uniquely in a position to address. It concerns one
22 of the issues we have thought a lot about so far, about
23 English Votes for English Laws, or excluding Scots MPs
24 from voting on matters to do with England, and the
25 objection often is that Scots MPs should not be excluded

1 because of the financial consequences for Scotland,
2 Scottish parliament, of English-only bills.

3 You have been a backbench MP in opposition, then you
4 were part of the shadow team, then you were a minister
5 of state in the Scotland office, then you were
6 a minister in the Scottish government and then you were
7 First Minister, so a range of perspectives. I would
8 like to ask you, from that range of perspectives,
9 whether you think Scottish MPs in Westminster really saw
10 themselves, and then acted in that light, as custodians
11 of the financial interest of Scottish policy, before
12 devolution and the Scottish Parliament, and after
13 devolution, and, if so, after devolution whether they
14 had any kind of relationship with the
15 Scottish Parliament itself in carrying out that
16 custodian role.

17 MR HENRY McLEISH: I think the first point, I do not think
18 there was a recognition in our minds -- I mean, I spent
19 ten years in opposition with Mrs Thatcher and John
20 Major -- and I do not think we were batting every day on
21 the financial wicket of Scotland. I was just reminded
22 when I saw Lord Robertson, because he was Shadow
23 Secretary of State for Scotland and I was his deputy for
24 two years before the election, and he then went to
25 defence.

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1 I think the second point is that after devolution,
2 one of the things that struck me -- and it comes back to
3 this interest of Westminster, I think, although we might
4 not be blameless -- is that there was never a solid
5 relationship between any party here and any party at
6 Westminster. The largest problem was the Labour party,
7 because there was much discussion at that time, that
8 even although Blair had taken on the unfinished business
9 of John Smith, and to be fair to Blair he saw it through
10 with little change, there was a lot of Scottish MPs who
11 thought even at that point it was a bad idea.

12 So, from the start in 1999, there was really not
13 a lot of political dialogue between the two parties, UK
14 and Scottish. I think that applied to other parties but
15 I cannot talk about that. What it meant was that the
16 kind of off the record briefings, the kind of irritating
17 comments that were made from Westminster, all about
18 disparaging, and of course the issue about the
19 parliament, the issue about some other aspects. A
20 fledgling parliament, two or three years old, it is
21 going to make mistakes. There was no kind of tolerance
22 level for that.

23 To answer your point: no, I do not think there's
24 been any. And, to be fair with you, I do not think
25 there's much now. I think there may be some changes

1 happening after the 2007 election, certainly after 2011
2 elections at Holyrood, to have a better sharing of
3 ideals and aspirations as well as knowledge, so that
4 does not all go well. Well it does all go well in
5 a sense because if there's that degree of distance
6 between the two, some kind of federal structure may
7 cement that, as long as there's a bigger understanding
8 at Westminster and in the four areas, that this is
9 serious business now.

10 Sir William, if I could make a point in response to
11 Charlie, is that my genuine fear is that unless and
12 until Westminster starts to take the whole issue
13 seriously, then we are not going to make the progress
14 that I think fair minds and good minds and intelligent
15 minds could actually make.

16 PROFESSOR CHARLIE JEFFERY: Thank you very much.

17 SIR STEPHEN LAWS: Mr McLeish, thanks for coming.

18 On the question of getting Westminster to understand
19 devolution better, do you think that if English MPs
20 practised in a context in which they were asked to
21 separate their role as English MPs from their role as
22 members of the UK parliament, that would help to give
23 them a better understanding of devolution?

24 MR HENRY McLEISH: That's an interesting question. When
25 I was an MP for 14 years at Westminster, I think you try

1 and get in the minds of English MPs because they have
2 the same challenges, the same constituency pressures and
3 the same problems, that they want things for their own
4 areas. I actually found that the general good will in
5 The Commons on a lot of issues, well beyond the
6 tribalism we project everywhere is quite significant.

7 Therefore, I think one part of your answer is
8 I think there's scope at Westminster for a greater
9 understanding, which does not mean any party loses
10 anything or one party gets something over another party.
11 That's one point.

12 I think the second point is we are talking about
13 some of the suggestions that have been made to your
14 Commission, some of the dialogue over the last three or
15 four years under both Brown and Cameron, was to look at,
16 "Well, let's have an English committee, let's have an
17 equivalent of what we had in Scotland, the Scottish
18 Grand Committee", but again I do not think these
19 substantially will help. Because what they do is
20 compartmentalise the issue, avoiding debate on some of
21 the bigger structural issues we have talked about. So
22 I am not sure whether English MPs will think as you have
23 suggested, I do not think myself if they did it would
24 take us much further forward. The other fear I have is
25 that after 305 years now of the union, the celebration

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1 in 2007 was not celebration, sorry, it was
2 a commemoration. If you come to a place like Scotland
3 now, there's a growing distance between that concept
4 that we are all in it. As far as I'm concerned it's
5 a generational thing. We are all getting greyer, me in
6 particular, but I was born post-war and people can have
7 an affinity; we fought together, died together and did
8 this. If you look at the younger generation in
9 Scotland, and I would think the younger generation in
10 England, they sadly might not have any concept of that
11 kind of shared history that bound us together, made
12 devolution work because we were giving something to the
13 part, and as we move into 2020, 2030, 2040, the actual
14 landscape of the electorate will be incredibly
15 transformed. So therefore the union, as a positive
16 concept, in a place like Scotland will I think
17 positively disappear.

18 SIR STEPHEN LAWS: Can I be clear: we are coming at this
19 from the point of view, are we, that the risk of our
20 coming up with anything radical is that it tends further
21 towards the dissolution of the union, and that's why you
22 are suggesting we do not go down that track?

23 MR HENRY McLEISH: Again with the greatest respect, Mr Laws,
24 the current debate at Westminster, and some of the ideas
25 about splitting up the bills et cetera, that would not

1 be radical for me. I think the best tinkering solution
2 would be the one where the Speaker says English, and
3 then you would have a situation where the House would
4 vote on second reading, only English in committees, at
5 the report stage only English and in third reading would
6 be everybody, because you kind of mentioned that
7 particular point.

8 So to me the radical view is one where we move
9 significantly, after a period of understanding, to devo
10 max, plus whatever; I do not want to move to
11 independence, that's the other solution. I fear that if
12 you tinker, that will create a false illusion at
13 Westminster you are actually dealing with the problem.

14 I read with interest some of the submissions that
15 have been made. My concern is that this procedural
16 technical issue, this process issue at Westminster,
17 should not be confused with real political issues, and
18 constitutional. I think Sir William started off by
19 talking about the English were getting slightly
20 irritated about free personal care and they are paying
21 for this and that. Are these not hugely political
22 questions, hugely constitutional if you get to the
23 redrafting of the boundaries? I am not sure they have
24 anything whatsoever to do with English MPs voting on
25 English laws.

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1 SIR STEPHEN LAWS: If the issue is just a political one, is
2 it tinkering to say the answer to a political question
3 is not rules that try and prevent people pursuing their
4 political interests, but the answer is transparency and
5 then politics can lie where it falls. What is lacking
6 in transparency at the moment is that it is not apparent
7 to the English when it is that Westminster as a whole,
8 when UK MPs as a whole, are overriding English MPs.
9 That's partly not apparent because it does not happen
10 very often, but it is also not apparent because the
11 procedures do not bring that out.

12 If one came up with a procedure so that when that
13 does, perhaps rarely, happen it was apparent that
14 a government had made a decision to override the views
15 of English MPs and had explained why it was doing so,
16 that that would be a political answer to a political
17 problem.

18 MR HENRY McLEISH: I think that would be more positive in
19 dealing with the issue. My fear is that if you come up
20 with some of the suggestions that have been made which
21 just look technical, then at that point they would not
22 be radical, they would be short term and they would not
23 answer some of the problems.

24 If on the other hand you were making the politics of
25 it quite clear, that there were issues -- I personally

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1 believe that in the future, 10, 20, 30 years' time, it
2 would be ridiculous for Scottish MPs to be still going
3 to Westminster to vote on housing in Cornwall. Because
4 I believe, in terms of their own identity and
5 nationality, it's an expression to be made. So if there
6 was transparency and if there was a tacit acceptance
7 that, "Look, this is very much a short term". In part
8 of your report, I do not know whether it stretches the
9 terms of reference, but to say pending, pending in some
10 form, a serious debate about Westminster, about the
11 origin of these issues because they are not happening in
12 the committee corridors in Westminster; they are
13 actually out in the country, it's all about the new
14 structure, changes, about devolution, bigger issues.

15 SIR STEPHEN LAWS: Thank you. Can I just ask you one
16 question on the solution you suggested, which
17 was: second reading, then English in committee, English
18 on report, House on third reading. The practical effect
19 of that is to give the final say on the contents of the
20 bill to English MPs, is it not?

21 MR HENRY McLEISH: Put it this way, I do not want you to do
22 that. I threw it up because this has permeated some of
23 the thinking, the Conservative thinking, and to be fair
24 some of the Labour thinking, from a clerk's
25 deliberations as well, so I would not advocate that.

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1 Because to me, once you get into that, you are up
2 against this issue of saying, "Why bother, why bother
3 about this, we are going to get a second class status",
4 and I don't know anything like your good selves about
5 the real technicalities, about procedures in the House,
6 the constitution of the House, but actually if Scottish
7 MPs are elected in a UK general election to go to
8 parliament, they are elected on the basis they can vote
9 for anything that happens in that parliament.

10 SIR STEPHEN LAWS: That system that I have just described
11 gives final say on whether you have the bill at all to
12 the UK majority, it probably gives final say on the
13 detail to English members; would you prefer a system in
14 which UK members had final say on both - whether you
15 have the bill and on the detail?

16 MR HENRY McLEISH: I do not support either option. Sorry to
17 be evasive, I am just being honest with you in saying
18 I do think these are short term prescriptions for
19 essentially bigger political issues.

20 PROFESSOR YVONNE GALLIGAN: Good afternoon, Mr McLeish.

21 I would like to pick up on some of the points that
22 have been raised and develop them a little bit, and
23 maybe have a slightly different take on them. One of
24 the phrases that you have repeatedly made is this notion
25 of the irritation factor. In listening to you,

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1 I understood that this irritation factor took place in
2 two locations, one with Westminster MPs and the other in
3 the public mind. I wondered how separate these were,
4 are they connected in any way? I was not sure if they
5 were and I don't know if you can. I am interested in
6 any thoughts you might have on that.

7 MR HENRY McLEISH: I suppose the important thing from the
8 public perception issue in England -- and I am sure
9 Professor Jeffery has loads of statistics in terms of
10 opinion polls -- but clearly there are polls done which
11 put questions like, "Why are we getting this", "Would
12 you not like getting that", and then making
13 a conclusion. So I think there are certainly concerns
14 out there.

15 But to deal with that one first, if, as we did in
16 Scotland, and I was heavily involved in this, introduced
17 free personal care at the point of need, are the English
18 residents concerned about that as an issue that they are
19 seeing something they would like or do they perceive it
20 through the prism of how dare we keep subsidising the
21 Scots and they use our money for things we cannot have.

22 So I am just wondering what the source of that
23 irritation is. It could well be that -- I do not think
24 they are interested in the Barnett formula, I'm sure in
25 a pub in Newcastle they are not talking about Barnett

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1 every night, but they might be talking about the fact we
2 give decency and dignity to people that need protection
3 in their own house, and we think that's progressively
4 a good issue.

5 I think there's confusion about what that actually
6 means. I think in the House, any maybe be slightly
7 partisan, I think overall you could say a lot of parties
8 are not particularly interested in devolution, but it
9 does allow members who are representing areas in the
10 House -- and I have read a lot of stuff in the House of
11 Lords, Alex Salmond was described as a fascist by
12 someone in the House of Lords. You know, the great
13 thing about that is that it goes down like a lead
14 balloon up here and plays into the hands of the
15 nationalists.

16 When you hear comments about Scotch junkies, subsidy
17 junkies, Westminster works on the basis with Scotland
18 that we do get a big cheque every year. I think there
19 are other ways, [inaudible], New Scotland Act, take that
20 slightly forward. I think the source of their
21 irritation is they see Scotland as some kind of
22 irresponsible parliament that spends money and devours
23 things they cannot have. Maybe the thing to do is to
24 accept, give us responsibility, so we can build respect
25 up and we can, domestic policy, actually raise the taxes

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1 and spend the money and have some kind of responsibility
2 within a UK union for that.

3 My basic answer to you is I am not quite sure of
4 what the source of the irritation is, it's clearly
5 manifested in comments and press and in the House, but
6 at the end of the day I think it comes back to the point
7 I have made consistently: these are big political issues
8 and, quite frankly, in Northern Ireland or Wales or
9 Scotland, if they want to use that cheque then that's
10 essentially the difference that devolution brings, but
11 it's the difference that a lot of MPs at Westminster
12 cannot [word], to use a Scottish word, or understand.

13 PROFESSOR YVONNE GALLIGAN: This leads me on to my next
14 question or discussion point, which is that perhaps
15 there is a way of addressing this lack of understanding,
16 especially the lack of understanding at Westminster.
17 I think you were very articulate, certainly in
18 crystallizing in my mind, the idea that devolution is
19 about England as it is as much about the other nations
20 and the other countries.

21 Maybe there is a way of formalising or finding
22 structure within which this coming to appreciate that
23 devolution, that England has as much a part to play in
24 this devolution process as the other partners in the
25 devolution process have. Maybe this is something that

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1 falls within the bigger picture that you've been
2 thinking about.

3 MR HENRY McLEISH: Yes. I would like to see a debate like
4 that because, forgive me, I suppose I am giving you
5 a Scottish perspective, and it may look like I'm downing
6 on the English and downing on the parliament, but my
7 greatest wish would be for a much healthier, bigger
8 debate about where the whole of the UK goes. Without
9 diverting too much to distractions, for example I get
10 quite appalled by the attitude at Westminster, in some
11 parties, towards Europe. I think we're on another
12 journey where, despite current crises in parts of Europe
13 and problems with the euro, Europe is going to be a big
14 place to be and more powers might be ceded to Europe
15 rather than less, and having referendums on what kind of
16 fish we eat every day, as some would have it.

17 At the other end, you have devolution, which is
18 ceding powers, as we have done, to Scotland, Wales and
19 Northern Ireland. Wales has progressed because it now
20 has primary legislation, Northern Ireland is a fantastic
21 success story, I think by any objective criteria, and
22 Scotland the same.

23 Does it not get to a point where an institution like
24 Westminster actually starts to see that this is not
25 Albert Einstein politics, this is essentially a nation

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1 which is transfixed -- parliaments are often transfixed
2 in the past -- and has to lift the blinkers and see that
3 things are happening.

4 They can rail against it, but the net effect of that
5 in Scotland might be we might be setting beside them in
6 the UN in a decade. It's when you start to get the
7 harsh reality of that in your mind, it might focus
8 better wisdom in England. I would certainly welcome
9 that degree. One of the respects I pay is that
10 a country like England -- I mean, the UK still is one of
11 the most highly centralised countries in Europe and
12 50 million people are actually legislated on from
13 London. Experience of devolution suggests how crazy can
14 that be.

15 Therefore, if we were saying pay respect to England,
16 that's not saying you need ten regional assemblies or
17 parliament, you are going to need one English
18 parliament, but actually, England, you deserve to come
19 out of this better than your current Parliamentarians at
20 Westminster are allowing you to do. And at the end of
21 the day, to confront fascism and other parties, and
22 there's a lot of disillusionment and disenchantment
23 about politics generally, let's actually respect England
24 by saying there's a bigger future in devolution, and we,
25 as Scots, Irish and Welsh, want to see you part it. The

1 more successful that is, then I think the more
2 successful the whole issue becomes.

3 PROFESSOR YVONNE GALLIGAN: Just one final question to you
4 in relation to that: in order to put some structure on
5 something like that, would it be beneficial for the
6 parliaments to have an arrangement by which the
7 parliaments can speak to one another?

8 MR HENRY McLEISH: In the early days of the Blair government
9 in 1997, the preparation of the white paper went
10 superbly well and we had the special committee, and I
11 think that went forward, and we got the white paper and
12 the SCS. But there was no real discussion at that
13 point, because we could not see the future, about the
14 workability of everything we were suggesting and the
15 relationships between the different entities as part of
16 the union.

17 So to answer your question: what we do need is
18 a much more thoughtful view because at the end of the
19 day, even though we disagree with the political parties
20 at Westminster, and they disagree with us, we are
21 actually running parliaments that affect the daily lives
22 of people. So there's a bigger, I think, bit of
23 fairness and justice here that we should reflect what
24 they want. Therefore, if we could have a period in
25 which we get beyond the ministerial committees, they

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1 have not worked; they have become show cases for the
2 First Minister and other people, and it was good to meet
3 the Northern Ireland people and Wales, but in that sense
4 there is no forum where you can have a reasonable
5 debate, especially with people that have some kind of
6 open mind that the journey does not have a destination,
7 but the fear would be that if we do not have an idea we
8 may go somewhere we do not want to go, and that should
9 encourage Westminster as well as the devolved areas.
10 That would be a huge step forward, bearing in mind
11 between 1997 and 1999 in the Scotland Act, I do not
12 think there was a lot of consideration given, we were
13 too busy; we were trying to change the world, and change
14 the union as well. After that we got into running
15 Scotland, Westminster got into running Westminster, and
16 I think one of the problems the Labour and Lib Dem
17 coalition had was it was too busy governing, rightly so,
18 to see anything above that, so it drifted. But then of
19 course you have, in 2007, a minority government, now
20 2011; you have the First Minister in a party that
21 governed credibly, have a political plan for Scotland,
22 have a purpose that people see, inject excitement into
23 what's happening and all of a sudden wrap that in
24 patriotism, pride and passion in the [word] and you have
25 a winning mix. By default, the unionist parties at

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1 Westminster and in Scotland have no excitement because
2 they are fighting this [word] action against the flow of
3 independence, when in my view, as an eternal optimist,
4 we should be -- when I say "we", sorry, I am thinking
5 back to history, I am still a Labour party member -- we
6 should be running with that because there is no monopoly
7 on Scottishness for one party, but it's at Westminster
8 that has to be recognised.

9 I make a final point in reply to yourself: let's try
10 and make the constitutional question not just an extra,
11 because if you listen to Westminster, "We are busy, we
12 are dealing with Europe, we are dealing with
13 immigration, with education, we are dealing with this
14 and that", but somebody should say, "Hey, by the way,
15 this is about one country of the union maybe becoming
16 independent, isn't it time we put out the political
17 agenda and gave it the importance it deserved".

18 PROFESSOR YVONNE GALLIGAN: Thank you.

19 THE CHAIR: Thank you very much. We are very grateful to
20 you for coming.

21 MR HENRY McLEISH: Thanks for the courtesy, thank you.

22 (5.50 pm)

23 (Mr Henry McLeish withdraws)

24 (The witness evidence concludes in Edinburgh)

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