The West Lothian Question

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This note explores the concept of the 'West Lothian Question' in the light of the devolution settlements in Scotland, Wales and Northern Ireland from 1999. One aspect of the debate about devolution has been the question of the role at Westminster of Members representing constituencies in parts of the United Kingdom to which a measure of self-government in domestic affairs was to be or has been granted. Another is the role of such MPs (and those representing English constituencies) in the consideration of matters now devolved to bodies elsewhere in the UK. This aspect of the debate is often referred to as the 'West Lothian Question' (so named following a campaign by Tam Dalyell, the Member for West Lothian, against Labour's attempt to introduce devolution in the 1970s) or, more recently, the 'English Question'. The question refers to the constitutional anomaly by which Members representing Scottish constituencies (and on occasion from Welsh and Northern Irish seats) may vote on legislation which extends to England, but neither they nor Members representing English seats can vote on subjects which have been devolved to the Scottish Parliament. Earlier material on these questions is set out in detail in Research Papers 98/3, *The Scotland Bill 1997/98: some constitutional and representational aspects* and 07/24, *The House of Commons (Participation) Bill.*

Contents

A. Historical background

1. Home rule/devolution legislation

This part of the Standard Note summarises the advent of devolution within the United Kingdom before examining earlier attempts to differentiate voting in the Commons by territorial background of Members.

The period between 1886 and 1914 saw the introduction of three Irish Home Rule bills into Parliament. The passage of these bills is summarised by Vernon Bogdanor in *Devolution in the United Kingdom* as follows:

> The first, in 1886, was defeated in the Commons by 343 votes to 313 … The second, in 1893, passed the Commons but was defeated in the Lords by the overwhelming majority of 419 votes to 41. The third bill, introduced in 1912, was again rejected by the Lords, but, under the provisions of the 1911 Parliament Act, limiting the delaying power of the Lords to three sessions, it became law in 1914. With the outbreak of war, however, the Act was suspended, and in fact never came into effect.[1]

The Act was repealed by the *Government of Ireland Act 1920* which provided for two Parliaments in Ireland; one in Dublin and one in Belfast. After the creation of the Irish Free State in 1922, Northern Ireland was left as defined in the 1920 Act, within the United Kingdom and with a devolved Parliament in Belfast, at Stormont, which lasted until the imposition of Direct Rule in 1972.[2]

The Labour Government of 1974-79 started to legislate for devolution to Scotland and Wales with its *Scotland and Wales Bill 1976-77*,[3] presented on 29 November 1976, which provided for a Scottish Assembly and a Welsh Assembly. Following the decision of the Commons not to approve a timetable motion on the bill, the Leader of the House, Michael Foot, announced on 14 June 1977 that it was no longer practicable to contemplate further progress on the bill[4] and it was withdrawn.[5] Separate bills for Scotland and Wales were introduced the following session.[6] Although both were passed neither came into effect as the majority in favour of devolution for Scotland was not sufficient and there was no majority in favour of devolution for Wales when referendums were held in the two countries in March 1979.

Devolution to Scotland and Wales was a manifesto commitment of the incoming Labour Government in 1997 and it introduced such bills in its first parliamentary session.[7] The Scottish Parliament and National Assembly for Wales were set up in 1999. Also in 1997-98 the Government introduced the *Northern Ireland Bill*,[8] to give effect to the Belfast Agreement and provide for a new Northern Ireland Assembly. The Assembly was suspended on 14

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1 Vernon Bogdanor, *Devolution in the United Kingdom,* rev ed 2001, p19
2 See Library Research Paper 98/57 *Northern Ireland: political developments since 1972:* http://www.parliament.uk/commons/lib/research/rp98/rp98-057.pdf
3 *Scotland and Wales Bill,* Bill 7 of 1976-77
4 HC Deb 14 June 1977 cc225
5 *Votes and proceedings* 16 June 1977
6 *Scotland Bill,* Bill 1 of 1977-78, and *Wales Bill,* Bill 2 of 1977-78, both presented on 4 November 1977
7 *Scotland Bill,* Bill 104 of 1997-98, and *Government of Wales Bill*, Bill 88 of 1997-98
8 *Northern Ireland Bill 1997-98,* Bill 229 of 1997-98

October 2002 and was restored on 8 May 2007. The *Government of Wales Act 2006* is bringing about changes in the way devolution works in Wales now. An All-Wales Convention to prepare the ground for a possible referendum on full law making powers for the Welsh Assembly, chaired by Sir Emyr Jones Parry, was announced on 23 October 2007.[9] A commission to review the *Scotland Act 1998*, chaired by Professor Sir Kenneth Calman, was announced on 25 March 2008.[10]

One aspect of the debate about Home Rule and devolution over many years has been the question of the role at Westminster of Members of Parliament representing constituencies in parts of the United Kingdom to which a measure of self-government in domestic affairs was to be or has been granted. Another is the role of such MPs (and those representing English constituencies) in the consideration of matters now devolved to bodies elsewhere in the UK. This aspect of the debate, often referred to as the West Lothian Question or, more recently, the English Question, is examined in greater detail below.

2. The West Lothian question in the 1970s

The constitutional anomaly whereby Members representing Scottish constituencies (and on occasion from Welsh and Northern Irish seats) may vote on legislation which extends to England but neither they nor Members representing English seats can vote on subjects which have been devolved to the Scottish Parliament has since the 1970s been termed the West Lothian Question. This anomaly was named following a campaign by Tam Dalyell, the Member for West Lothian, against Labour's attempt to introduce devolution in the late 1970s. Responding to Mr Dalyell's arguments (discussed below), Enoch Powell commented: "This is the question with which, by an iteration for which he should be praised rather than blamed, the hon Member for West Lothian (Mr. Dalyell) has identified himself".[11]

Perhaps the most appropriate explanation of the West Lothian Question is therefore that attributed to the author of the Question, Tam Dalyell. He set out his argument in some detail in his 1977 book, *Devolution: the end of Britain*? He asserted that:

> If the United Kingdom is to remain in being, then there can be no question but that the Scottish constituencies must continue to be represented at Westminster .... Yet once the [Scottish] Assembly had come into being, and was legislating for those areas that had not been reserved to the United Kingdom Government, the position of the seventy-one Scottish Westminster MPs would become awkward and invidious. Their credibility - like those of their counterparts in the Assembly - would be deeply suspect, simply because there would be so many areas of concern to their electors on which they could not pronounce.[12]

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9 23 October 2007: http://new.wales.gov.uk/news/ThirdAssembly/OFM/2007/1753108/?lang=en
The Convention's website is at:
http://new.wales.gov.uk/awcsub/awchome/?lang=en

10 HC Deb 25 March 2008 c21-4:
http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080325/debtext/80325-0003.htm#0803254000001
The Commission's website is at:
http://www.commissiononscottishdevolution.org.uk/

11 HC Deb 14 November 1977 c87

12 Tam Dalyell, *Devolution: the end of Britain?*, 1977, p245-6

He examined, and rejected, four possible answers to the Question and concluded that "not one of them can be reconciled with Britain's continued existence as a unitary state".[13]

1. No Scottish or Welsh representation at Westminster
2. Maintenance of the status quo in terms of levels of representation
3. Reduction of Scottish and Welsh representation at Westminster
4. Scottish and Welsh MPs to speak and vote only on those matters not transferred to Scottish and Welsh Assemblies ('in and out Members')[14]

During the debate on devolution to Scotland and Wales on 14 November 1977, Mr Dalyell said:

> For how long will English constituencies and English Honourable Members tolerate…at least 119 Honourable Members from Scotland, Wales and Northern Ireland exercising an important, and probably often decisive, effect on British politics while they themselves have no say in the same matters in Scotland, Wales and Northern Ireland?[15]

However, the West Lothian Question was of course relevant to the Home Rule debate in relation to Ireland in William Gladstone's administration a century before. Professor Brigid Hadfield has noted: "only those with short memories have called this the West Lothian Question".[16] The four solutions outlined by Tam Dalyell were also considered during the controversies over offering some form of devolution (Home Rule) to Ireland, while maintaining its presence within the United Kingdom.

The Home Rule Bill introduced in 1886 sought to exclude Irish Members altogether from the Commons,[17] but among the difficulties with the Bill was the issue of taxation without representation (a frustration which a century or so earlier had set off the process leading to American independence). The 1893 Bill thus moved to the 'in and out' solution, whereby Irish Members would vote only on bills and clauses with UK wide territorial extent.[18] But this was removed at committee stage[19] and the final version of the Bill opted for a reduction in the number of Irish Members.[20] Subsequent bills also preferred this partial solution and in the *Government of Ireland Act 1920* the number of Northern Irish Members was fixed at 13, later reduced to 12 (after the abolition of university seats in the *Representation of the People Act 1948*), below what might have been expected in terms of numbers of electors. Representation increased in 1979, acknowledging the return of Direct Rule in 1972.[21] But Northern Ireland Members had voted for half a century in the Westminster Parliament without differentiation in terms of extent of UK legislation. A proposal from the Speaker's

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13 ibid p247
14 ibid pp247-51
15 HC Deb 14 November 1977 c122-3
16 Brigid Hadfield, *The Constitution of Northern Ireland,* 1989, p89
17 *Government of Ireland Bill,* Bill 181 of 1886, clause 24
18 *Government of Ireland Bill,* Bill 209 of 1893-94, clause 9
19 *Government of Ireland Bill,* Bill 428 of 1893-94, clause 9
20 *Government of Ireland Bill,* Bill 448 of 1893-94, clause 10
21 For further details see Hadfield, *The Constitution of Northern Ireland,* Chapter 1 and Library Research Paper 98/57 *Northern Ireland: political developments since 1972* http://www.parliament.uk/commons/lib/research/rp98/rp98-057.pdf

Conference on Devolution in 1919 for 'Grand Councils' comprising English, Scottish and Welsh MPs to consider bills for their particular part of the UK was not implemented, but the proposal has been resurrected since as a possible solution to the West Lothian Question.[22]

The practice of Northern Ireland Members voting on Great Britain specific legislation passed almost without comment until the time of the Wilson Government of 1964-66 with its very narrow majority. Harold Wilson protested when the Unionist parties supported the Conservatives in opposing the nationalisation of the steel industry, although the measure would not affect Northern Ireland. He asked his Attorney General to devise an 'in and out solution'. The Attorney General, Elwyn Jones, considered the matter too complex, and the Conservatives protested, with the Shadow Attorney General, Peter Thorneycroft, stating: "every Member of the House of Commons is equal with every other Member of the House of Commons, and that all of us will speak on all subjects".[23] Harold Wilson did not pursue the matter once his majority increased substantially in 1966.

The legislative and political problems of the Question were aired at length during the protracted proceedings on the devolution bills of the late 1970s, not least by Tam Dalyell himself, as well as by Enoch Powell (who, with other Unionists, emphasised the Northern Ireland perspective), by anti-devolutionists and by the Conservative Opposition. Margaret Thatcher explored the implications of alleged over-representation during the Second Reading of the *Scotland and Wales Bill* on 13 December 1976,[24] and Francis Pym, responding to a statement by the Leader of the House, Michael Foot, on the Government's proposals for new devolution bills in the 1977-78 session, described the West Lothian Question representation issue as "the single most contentious problem to arise in our debates on the [Scotland and Wales] Bill..."[25] The Government generally sought to deflect efforts at forcing it to make a detailed response to the Question posed by Mr Dalyell and others. Its view had been set out in the September 1974 White Paper *Democracy and devolution: proposals for Scotland and Wales*:

> The setting up of Scottish and Welsh Assemblies does not, however, detract in any way from the overriding interest of all the people of the United Kingdom in the determination of United Kingdom policies as a whole. The United Kingdom Parliament and the central Government Ministers will of course remain fully responsible for the overall interests of the United Kingdom and it is essential that the determination of United Kingdom policies should fully reflect the needs and contributions of all its constituent parts. For this reason the Government regard it as essential that both Scotland and Wales should retain their existing number of Members of Parliament in the United Kingdom Parliament and that there should continue to be Secretaries of State for Scotland and Wales who act as full Members of the United Kingdom Government in forming United Kingdom policies.[26]

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22 See Vernon Bogdanor, *Devolution in the United Kingdom,* rev ed 2001, pp48-50 for more detail on the Speaker's Conference and also *Conference on devolution. Letter from Mr Speaker to the Prime Minister,* Cmd 692, 1920

23 Knox MT, "Terence O'Neill and the crisis of Ulster Unionism 1963-69", PhD thesis cited in "The Government of England by Westminster" in *The English Question,* Robert Hazell (ed), 2006, pp77-8; Vernon Bogdanor, *Devolution in the United Kingdom,* 2001, p230; HC Deb 26 October 1965 cc96-7

24 HC Deb 13 December 1976 cc1004-5

25 HC Deb 26 July 1977 c316

26 Cmnd 5732, paras 32-3 (extracts). See also the full debate on a proposed new clause to the *Scotland and Wales Bill* moved by the Opposition. This called for a Speaker's Conference on "the appropriate number of

The November 1975 White Paper, *Our changing democracy*, simply stated that: "The United Kingdom will still be a single state … Parliament will remain ultimately sovereign on all matters, whether devolved or not, and will continue to include the present complement of Scottish and Welsh Members."[27]

The (Kilbrandon) Royal Commission on the Constitution, which reported in 1973, considered the effect of devolution on the Westminster Parliament[28] and noted that: "if devolution were to be to selected regions only, a problem would arise over the extent and level of representation of those regions in the House of Commons compared with that of regions which did not have legislative assemblies of their own."[29] The report then examined the Northern Ireland situation as an example of the difficulty of dealing with this problem, including an 'in and out' arrangement,[30] and concluded that "in our view, therefore, all Members of Parliament, whether or not they come from regions with their own legislative assemblies, must have the same rights of participation in the business of the House of Commons",[31] although it did go on to consider the arguments for reductions in the level of representation of countries/regions with their own devolved assemblies.

During the lengthy passage of the *Scotland Bill* 1977-78 a provision was inserted in the bill against the wishes of the Government which provided for a further vote after fourteen days if a bill which did not relate to Scotland was carried on a vote where votes from Members sitting for Scottish constituencies were decisive. This was an interim period to enable Members to reconsider the issue. This amendment was first proposed by the Opposition in the Lords at the report stage of the Bill[32] and rejected initially in the Commons on the casting vote of the Speaker, but then, when the Bill returned, passed by one vote.[33] This became Section 66 of the *Scotland Act 1978*. As noted above, the *Scotland Act* did not, however, take effect as the majority in favour of devolution for Scotland was not sufficient when a referendum was held in March 1979.

In 1975 the Standing Committee on Regional Affairs was created in the Commons, in order to offer English Members an arena to debate regional issues (but not legislation). The committee met infrequently but was revived in 2000, with a core membership of thirteen members, and with other Members for English constituencies being able to attend in a non-voting capacity.[34] This has also met infrequently.

Members of that House representing Scottish and Welsh constituencies after the enactment of this Act" (HC Deb 1 February 1977 cc375-512, defeated 199-277).

27 Cmnd 6348, para 296

28 Cmnd 5460, paras 810-5

29 ibid para 811

30 ibid para 813

31 ibid para 814. See also Part X on Northern Ireland generally (especially paras 1337-8)

32 HL Deb 13 June 1978 c241-7

33 For a full discussion of this provision, including its convoluted legislative history, see AW Bradley and DJ Christie, *The Scotland Act 1978,* 1979, notes to s66.

34 For further information see Library Standard Note SN/PC/867 *Regional Affairs Committee,* May 2001 and the standing order on the committee (S. O. No. 117):
http://www.publications.parliament.uk/pa/cm200506/cmstords/416/41604.htm#a132

B. The devolution settlement after 1999

1. 1997 – July 2007

Devolution to Scotland and Wales was a manifesto commitment of the incoming Labour Government in 1997 and it introduced bills in its first parliamentary session.[35] Although the issue of the West Lothian Question was raised during the debates on the *Scotland Bill* and the *Government of Wales Bill*, the Government was not prepared to consider any form of 'in and out' solution. The position was more complicated in Wales since the devolution bill retained powers to pass primary legislation for Wales in both devolved and reserved areas at Westminster. On second reading, the Secretary of State for Wales, Ron Davies, stated:

> There will be no reduction in the number of Welsh Members of Parliament as a result of the creation of the assembly, because the House of Commons will continue to pass primary legislation for Wales.[36]

Section 86 of the *Scotland Act* did contain provisions to reduce the number of Scottish seats from 72 to 59, but this readjustment retains Scottish representation at a level roughly proportional to that in the rest of the UK, rather than following the precedent of the *Government of Ireland Act 1920.* Appendix 1 of Library Research Paper 04/12 The *Scottish Parliament (Constituencies) Bill*[37] gives Scottish representation in the House of Commons since 1707 according to population and electorate. The following table shows the latest number of electors per constituency in the UK.[38]

Number of electors per constituency, December 2007

	Electors	Seats	Electors/seat
England	38,594,720	529	72,958
Wales	2,273,586	40	56,840
Scotland	3,926,262	59	66,547
Northern Ireland	1,125,935	18	62,552
United Kingdom	45,920,503	646	71,084

Source: Office for National Statistics *UK Electoral Statistics*

The Conservative peer Lord Baker of Dorking introduced his *Parliamentary Constituencies (Amendment) Bill [HL] 2006-07*[39] on 5 February 2007. This sought to reduce the number of parliamentary constituencies and amend the rules governing the number of electors in each constituency. Introducing the second reading debate on 18 May 2007,[40] Lord Baker said:

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35 *Scotland Bill,* Bill 104 of 1997-98, and *Government of Wales Bill*, Bill 88 of 1997-98

36 HC Deb 8 December 1997 c675: http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo971208/debtext/71208-07.htm

37 http://www.parliament.uk/commons/lib/research/rp2004/rp04-012.pdf

38 Provided by Ross Young, Social and General Statistics Section, 13.3.08

39 HL Bill 39 of 2006-07 http://www.publications.parliament.uk/pa/ld200607/ldbills/039/07039.1-i.html

40 HC Deb 18 May 2007 cc399-416: http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70518-0001.htm#07051825000003

> An average size of constituent electorate for all the United Kingdom would be 76,000 per constituency, which would have the following effect: under a general reduction to 581 MPs, England would have 486, 43 fewer than now; Wales would have 29, 11 fewer; Scotland would have 51, 8 fewer; and Northern Ireland would have 15, three fewer. All countries would lose some seats, but they would be a standard electorate size, which is only just and fair. Votes are worth the same wherever they are throughout the United Kingdom. It has always been said that we should overcompensate for Wales and Scotland. I do not think that that is fair, and there is always the issue of very large constituencies.[41]

In her speech replying the Minister, Baroness Ashton of Upholland, said:

> The noble Lord also mentioned Scotland, Wales and Northern Ireland. The electoral quota figures for England and Scotland are essentially now the same—at 69,935 and 69,934, they are almost identical. Indeed, that is larger than the equivalent figure for Wales at 55,640 and Northern Ireland at 60,969. But there are deep-seated reasons for that, to which the noble Lord referred. The current disparity reflects the particular nature of the devolution settlement in each part of the UK. There is parity with Scotland because it has primary legislation-making powers in many policy areas. The electoral quotas are smaller in Wales and Northern Ireland as they do not have the constitutional powers to make primary legislation for themselves. They have been deliberately provided for and protected by successive governments, so that the distinctive interests of Wales and Northern Ireland can be properly represented. We would have to take those issues into account before we even considered disturbing what has been a long-standing tradition that successive Governments have respected. We would need to think very carefully about that.[42]

Giving power to devolved bodies to introduce their own legislation in devolved areas has allowed differences to emerge between the policies of the Scottish Executive (and to a lesser extent its counterpart in Wales) and the UK Government. These have included the differences in policy relating to tuition fees, care for the elderly and health care. In part the issue has returned to the agenda because the British system of devolution is:

> …asymmetrical in that, although wide-ranging powers over primary legislation were given to the Scottish Parliament, Wales was given an Assembly with more limited power and no authority to make its own laws or to vary taxes (…) Second, there was little agreement about how to decentralize power in England. Changes to the territorial management of the United Kingdom were thus made as much in terms of a pragmatic political adjustment as of a logical constitutional settlement. This approach may have its merits; but it means that there is likely to be continuing debate about the scope of the devolution arrangements and about their implications for the rest of the United Kingdom.[43]

The Commons Procedure Committee's 1998-99 report, *The Procedural Consequences of Devolution,* recommended the following modification to Standing Orders:

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41 HC Deb 18 May 2007 c401: http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70518-0001.htm#07051825000003

42 HC Deb 18 May 2007 c412: http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70518-0002.htm

43 Gillian Peele, "Politics in England and Wales" in Patrick Dunleavy (ed), *Developments in British Politics 7*, 2003, pp203-4

> We recommend that the provision allowing the Speaker to certify Bills as relating exclusively to Scotland be transferred to a new Standing Order and adapted so that the Speaker may certify that a bill relates exclusively to one of the constituent parts of the United Kingdom.[44]

On certification, the Bill would then pass to a special second reading committee. The Committee did not envisage that this procedure would be adopted automatically and considered that there should be procedures to disapply the relevant standing order. Furthermore, the final stages of the Bill would be taken on the floor, where all Members could vote. The recommendations can therefore be seen as an evolutionary step towards an 'in and out' solution.[45] However, this proposal was not acceptable to the Government. In its response it noted that if "it were possible to identify some bills as relating exclusively to England, it is not clear what benefit this would have for the House".[46]

The then leader of the Conservatives, William Hague, spoke in 1999 of the need for 'English votes on English laws' and this commitment formed part of the Conservative manifesto for the 2001 general election.[47] A Conservative-established Commission on Strengthening Parliament, chaired by Lord Norton of Louth, a Conservative peer, recommended (in 2000) certification of Bills by the Speaker as applying to one or more parts of the United Kingdom and initial stages of Bills facing scrutiny by Members of that part only. The final stages would be on the floor, but only Members from that part would vote.[48] Michael Howard, when he was leader of the Conservative Party, indicated support for 'English votes on English laws' and this remained official party policy (as shown in an Opposition Day debate on the West Lothian Question on 21 January 2004 - see below).[49] The manifesto for the 2005 general election stated:

> "Now that exclusively Scottish matters are decided by the Scottish Parliament in Edinburgh, exclusively English matters should be decided in Westminster without the votes of MPs sitting for Scottish constituencies who are not accountable to English voters. We will act to ensure that English laws are decided by English votes."[50]

The present leader of the Conservative party, David Cameron, said in a speech in Glasgow on 15 September 2006: "I've asked the Conservative Party's commission on democracy, led

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44 HC 185 1998-99 para 30:
http://www.publications.parliament.uk/pa/cm199899/cmselect/cmproced/185/18502.htm

45 See Meg Russell and Guy Lodge, "The government of England by Westminster", in Robert Hazell (ed), *The English question,* 2006, p90

46 HC 814 1998-99 para 8:
http://www.publications.parliament.uk/pa/cm199899/cmselect/cmproced/814/81402.htm

47 For details see Roger Masterman and Robert Hazell, "Devolution and Westminster", in Alan Trench (ed), *State of the nations 2001: the second year of devolution in the United Kingdom,* 2001, p217

48 Conservative Party, *Strengthening Parliament: report of the Commission to Strengthen Parliament*, 2000, pp52-4:
http://www.conservatives.com/pdf/norton.pdf

49 HC Deb 21 January 2004 c1389-440:
http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040121/debtext/40121-21.htm#40121-21_head0

50 Conservative Party, *UK Manifesto,* 2005, accountability page:
http://www.conservatives.com/tile.do?def=manifesto.uk.accountability.page

by Ken Clarke, to look at possible solutions [to the West Lothian Question]".[51] The commission has yet to report on this.

The government reshuffle of 2003 again brought the issue briefly to the fore when on 11 June the Prime Minister took the opportunity to make fundamental machinery of government changes. These included the 'abolition' of the post of Lord Chancellor (subsequently modified); a new role for the Law Lords under an independent Supreme Court; an end to the separate posts of Secretary of State for Wales and Secretary of State for Scotland, which were to be combined with other Cabinet responsibilities; and, in place of the Lord Chancellor's Department, a new Department for Constitutional Affairs to which the staff of the Scotland and Wales Offices were transferred.[52] Eric Forth, Shadow Leader of the House, during a debate on the changes several days later, raised the West Lothian Question in connection with the new appointments:[53]

> a Scottish Member of Parliament is in charge of health in England, imposing on England a foundation hospital system that was rejected in Scotland, yet no English Member is allowed a say on health policy in Scotland. Another Scottish Member is responsible for transport in England while defending the interests of Scotland, yet is apparently reporting to an unelected English Minister in another place.[54]

These comments raise another aspect of the debate - the extent to which it is constitutionally and politically 'proper' for Ministers representing territorial areas outside England to be responsible in England for subjects which, in Scotland, are devolved to the Scottish Parliament. Professor James Mitchell has noted that the appointment of John Reid as Health Secretary in June 2003 marked the first time that a Member from a Scottish constituency had held the post since the second world war and Dr Reid's appointment as Home Secretary in May 2006 was the first held by a Member from a Scottish constituency since Sir John Anderson in 1939-40. Sir John sat for the Scottish Universities constituency.[55]

There is no parliamentary solution to this conundrum. Presumably by analogy with the 'two classes of MP' argument, this has not thus far been regarded as a matter appropriate for any legal or parliamentary 'regulation'.

The West Lothian Question was the subject of an Opposition Day debate on 21 January 2004 in which the junior minister, Christopher Leslie, defended the current devolution settlement, with some support from the Ulster Unionist David Burnside:

> **The Parliamentary Under-Secretary of State for Constitutional Affairs (Mr. Christopher Leslie):** Although the hon. Member for Rutland and Melton (Mr. Duncan) conducted his contribution in a calm manner, the Conservative motion is another example of the brazen opportunism that guides the tunnel vision—perhaps

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51 "Cameron: I will never take Scotland for granted", speech in Glasgow, 15 September 2006: http://www.conservatives.com/tile.do?def=news.story.page&obj_id=132019&speeches=1

52 The responsibilities of the Department for Constitutional Affairs were taken over by the Ministry of Justice in May 2007

53 Alistair Darling, Secretary of State for Transport took on the additional post of Secretary of State for Scotland, and Peter Hain, Secretary of State for Wales, the additional post of Leader of the House.

54 HC Deb 17 June 2003 c217: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030617/debtext/30617-07.htm

55 James Mitchell, 'Devolution's unfinished business', *Political Quarterly* 77 (4), 465-474

through the Mersey tunnel as my hon. Friends have suggested—of Tory policy under their latest leader.

Let us be clear about the principle on which this Parliament is based and should be based in future. In the House, every Member of Parliament is equal. All Members can speak on all subjects. The suggestion to the contrary is divisive and dangerous…. Having equality for Members of Parliament at the centre is symbolic of our aspiration for all corners of the United Kingdom to be treated equally. It is an essential unifying part of our country. To say that one class of Member of Parliament must only vote on one class of issue is the slippery slope down which I doubt the Opposition truly want to go in the unlikely event that they ever get into government again.

David Burnside: In promoting the most pro-Union of policies that has ever been heard from a party that traditionally is not regarded as a pro-Union party, does the Minister agree that it is time he put up candidates in all parts of the United Kingdom, won more pro-Union Labour seats in Northern Ireland and separated himself from the separatist nationalist Social Democratic and Labour party?

Mr. Leslie: Clearly a political party can choose to stand wherever it wishes. The hon. Gentleman said that he was disappointed with his historic allies, the Conservative party, whom he feels unable to support tonight. I understand that he will side with Her Majesty's Government. In that, he is most welcome. Although some hon. Members mentioned their worries about the constitutional symmetry across the country, it is not simply a matter for Scotland, but is relevant to other parts of the country as well. The West Lothian question is just as much a west Belfast question. If we need to correct something for Scotland, which we do not, we also need to address it in Northern Ireland. Northern Irish Members of Parliament frequently voted on non-Northern Ireland business when the Assembly was up and functioning. Curiously, there was no objection from the Conservatives at the time. I suspect that their constitutional outrage is convenient and flexible, appearing only when they want it to.[56]

There were a number of questions to the Prime Minister, Tony Blair, on the West Lothian Question when he appeared before the Liaison Committee on 7 February 2006:

Q269 Dr Wright: I find that my constituents who are in Middle England are saying to me increasingly that they are worried by the fact that measures that are being passed that apply only to England are being voted on by Members of Parliament from Scotland and Wales who have their own parliaments. We are shortly to have a vote on smoking in public places. This is being decided separately in Scotland, it is being decided separately in Wales, it has even been decided separately in Northern Ireland so as to apply to England and yet it is to be voted on by Scottish MPs, by Welsh MPs and by MPs from Northern Ireland. So you can see why the cry is going up from my constituents who say "Why can't we have English votes on English laws?"

Mr Blair*:* I understand the argument. The reason I do not agree with it is the reason that was given back in the 1960s when this argument first arose in respect of Ulster MPs and that is because I think if you try to have two classes of MP it just does not work. This is a debate we are going to continue having over the next few years, but I just do not agree with it.

Q270 Chairman: Prime Minister, the more you expand devolution the more England-only legislation there is. I have raised this point with you before and you dismissed it,

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[56] HC Deb 21 January 2004 c1433-4: http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040121/debtext/40121-33.htm#40121-33_time0

but you cannot dismiss it indefinitely. It will not go away. As I said in the debate on Welsh devolution the other day, it is going to come back and bite us. Eventually the English voter will not put up with me coming and telling them what they can or cannot do when I am not accountable for a single England vote.

Mr Blair*:* Some of those round the table may agree with this. I do not because I think if you end up with two classes of MP you will end up with a host of real problems.

Q271 Chairman: It is not second-class MPs, Prime Minister. You have altered the constitutional balance with devolution. I am against devolution and I always have been. You cannot argue from a position of a balance of power pre-devolution that devolution has altered the relationship and the House of Commons has to come to terms with that. You think we can get away indefinitely with failing to address it and we cannot.

Mr Blair*:* I am not failing to address it. I am simply saying I do not agree with you and the reason I do not agree is that English MPs remain in the overwhelming majority, the public spending is decided by a majority of English MPs and that has a Scottish and English dimension to it. I think if you try creating two classes of MP you will get yourself into all sorts of trouble and you will find it very, very hard to start distinguishing between those things that are purely English, those things that are purely Welsh or Scottish. I can totally understand why our Conservative colleagues wish that to be the case, but I do not agree with it and never have. It is not that I am avoiding addressing it, I am just saying I do not agree.

Q272 Chairman: By the nature of the Labour Party votes it is inevitable that when you get the smaller Labour majorities the Labour majority is dependent on the Scottish and the Welsh votes. At that time you will not have an English majority or the party would not have an English majority in the House of Commons.

Mr Blair*:* We have got a UK Parliament.

Q273 Chairman: How do you deal with that? It should have been thought about when the devolution programme was being pressed forward but no-one would face it.

Mr Blair*:* I am sorry, it was thought about. It is not as if this argument has not been fought over. You will remember it better than me from the 1970s for heaven's sake. I totally understand why people from other political parties think it is a good idea. I think in the end if you try to divide MPs up into two categories and then you have to define the legislation they are able to vote on and they are not able to vote on you will find it very hard. That is why I confidently predict that although there will be a lot of debate and argument about it, I doubt that a government is going to introduce this. This debate has gone on forever. It is not as if the issue has not been addressed.

Chairman: We will probably return to this. [57]

The Liaison Committee did indeed return to this when Tony Blair appeared before them for the last time on 18 June 2007:

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[57] http://www.publications.parliament.uk/pa/cm200506/cmselect/cmliaisn/709/6020706.htm

Q152 Sir George Young: Prime Minister, can we turn to another part of the constitutional picture where your legacy is mixed and that is devolution. Your manifesto in 1997 said of your devolution proposals for Scotland: "The union will be strengthened and the threat of separatism removed." With a Scottish Nationalist First Minister in Scotland, that has not happened, has it?

Mr Blair*:* Well, I am not sure about that. I think the fact that the SNP beat us by one seat is obviously unfortunate for us as a Labour Party, but I think the interesting thing is that the support for separation in Scotland is significantly down from where it was in 1997. I think if we had not met the legitimate aspirations of the people of Scotland, Wales and Northern Ireland for a greater measure of self-government, we would have weakened the United Kingdom. I think it is perfectly natural that from time to time people will want to vote for different political parties, and if I could give you some advice, George, get your own party sorted out up there and then they will offer us some competition rather than the Nationalists!

Q153 Sir George Young: I think the threat of separatism has not been removed, which was the aspiration. Can I turn to a related question. The Scottish citizen through his MSP has total control over Scottish domestic policy and through his MP he has leverage, sometimes decisive, on English domestic policy. The English citizen has no leverage at all on Scottish domestic policy. Through his own MP he has control over English policy but that can be overturned, as it has been. How can that conceivably be a balanced, sustainable constitutional settlement?

Mr Blair*:* The alternative is English votes for English MPs and I just completely disagree with it for the reasons that were given 40 years ago when first debating devolution in Ulster. If you go to two classes of MPs it will do a lot of damage

Q154 Sir George Young: Do you not risk then having two classes of citizens and may that not be more important?

Mr Blair: I think the way that our constitution works is through a balance. I do not pretend that you can state all this logically and define it in a way that satisfies everything, but the fact of the matter is that the English are 80% of the votes and the MPs and so on, and if you end up in a situation of English votes for English MPs you will create two classes of MP and you will do exactly the damage that people thought would be done all those years ago when devolution first was raised for Northern Ireland, and both parties rejected it then, and they were right to do so in my view.

Q155 Sir George Young: Can we look at the damage that may be being done at the moment. If you take higher education—we have just been talking about it—a Lithuanian, a Pole or a German pays nothing for his education in Scotland whereas an English student does and his parents are probably subsidising everybody else through their taxes. How on earth can you defend that?

Mr Blair*:* In the end what we do is we give a certain amount of grant, public money to Scotland, they decide how they are going to spend it. We do not increase that, incidentally, as a result of the decisions taken by the SNP Government there. If they decide they want to spend the money in a different way, they can spend the money in a different way. But then they are going to have to tell the Scottish people what other services they are going to reduce in order to pay for it. What they certainly cannot do is increase the spending and then just hand us the bill

Q156 Sir George Young: Can we talk about the money because there is a certain amount of headroom in Scotland which enables them to fund public services which

are either not available or have to be paid for in England, for example access to certain drugs. Lord Barnett, he of the Barnett Formula, last year denounced the Barnett Formula as over-generous to Scotland, he said it should be scrapped and sums of money returned south of the border. Do you agree with him?

Mr Blair*:* I do not actually, no, because again I think it is part of the balance that we have in our constitution and I think if we want to keep the UK together, the Barnett Formula is a small price to pay for that, even though I understand why it causes concern in parts of England

Q157 Mr Beith: It certainly does.

Mr Blair: If you look at what has actually happened to the UK over the years, if you look around the world at the amount of secessionist pressures and separatist pressures there are, and various disputes that there are within countries, I think we have found a way through that and the interesting thing about the SNP is if they did try to move towards actual separation they would be brought up very sharp by the rest of the Scottish Parliament that is opposed to it.

Q158 Sir George Young: But is not your legacy to a Scottish Prime Minister a United Kingdom that is less united and people who feel less British and is not the going going to be much tougher for him because of where he comes from?

Mr Blair: I do not agree with that at all. I think one of the reasons why we should be proud of what the UK is today is that if you go back to 1997, let us not assume then that the UK was under no pressure from separation, it was, it was under intense pressure in Scotland, to a certain extent in Wales and, of course, Northern Ireland was how we know it was, I think if you look at the UK today it is stronger. Now, of course you will get different governments from time to time. I think that over time, incidentally—and I was only half-joking when I was talking about the Conservative Party then—you will get a proper policy debate with a different policy agenda which will be more conventional in terms of parties fighting each other, whether in Scotland or in Wales. Indeed, I think you can see that happening in Wales. But, I do not agree that the UK is weaker today. The fact is, as I say, if you look at what has happened in Wales, the Nationalist Party have had to eschew separation there and if you look at the SNP in the recent campaign, they did everything they could to run away from the issue.

Peter Luff*:* Prime Minister, we must move on, to keep to time. Phyllis Starkey.

Q159 Dr Starkey: Prime Minister, your original proposals to balance devolution in Scotland and Wales and England were to move to directly elected assemblies in England. That has not happened because of the "no vote" in the North East and there is a perceived democratic deficit in regional government in England. Do you regret not being bolder at the start and just imposing an elected regional government system on England?

Mr Blair*:* No. I am not sure that is the way forward, if I can again be completely frank about it. One big measure of devolution that we did do, of course, and people forget this when we talk about devolution of England, is that in London we have a Mayor and an Assembly. After all, that is the major larger city.[58]

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[58] http://www.publications.parliament.uk/pa/cm200607/cmselect/cmliaisn/300/7061804.htm

That reference to the "no vote" in the North East reminded the committee that one alternative that had been canvassed as a partial solution to the West Lothian Question was the development of regional assemblies within England.[59] However, the No vote recorded in the referendum on a North East Assembly in November 2004 is generally accepted to have postponed for some time the development of a tier of regional government that is directly elected.

2. July 2007 –

The debate on the West Lothian Question/English Question has intensified in recent months following the elections to the Scottish Parliament and Welsh Assembly in May 2007 and the subsequent formation of governments of different political complexions to that of the United Kingdom; an SNP Government in Scotland and a Labour-Plaid Cymru Government in Wales.[60] The succession of Gordon Brown as Prime Minister in June 2007, an MP for a Scottish seat, has added an extra dimension to the debate.

The Government published its green paper on constitutional reform *The governance of Britain* on 3 July 2007.[61] This includes a section on devolution which states:

> **Westminster and devolution**
>
> 141. Parliament at Westminster remains at the heart of our system of governance. There can be no doubt that the creation of the United Kingdom Parliament through the Acts of Union was an essential precondition for Britain's economic, social and democratic development, and for Britain's rise as a world power. It was also one of the important factors in the growth of a British way of life based on active citizenship, a volunteering spirit and a strong civic society.
>
> 142. Links between the nations of the Union have been forged over centuries of intermarriage, friendship and migration. All parts of the UK have made an enormous contribution over the years to our economy and our culture. The Union represents our values and gives them expression to the world. Our constituent nations have retained their separate identity, but at the same time have drawn from and influenced each other.
>
> 143. Devolution does not cede ultimate sovereignty. The decisions Parliament takes have consequences for all the people of our nation. The great strength of our constitution is its effectiveness. It can accommodate difference and rough edges in support of wider goals of national unity, affiliation to the institutions of the state and the service of those institutions to the public.

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59 For a description of government policy see Library Standard Note SN/PC/3176 *The draft regional assemblies bill*

60 See Library standard notes SN/PC/04593 *The new Scottish Government:* http://www.parliament.uk/commons/lib/research/notes/snpc-04593.pdf
SN/PC/4407 *The Welsh Assembly elections May 2007: the formation of the Welsh Assembly Government and recent developments in the Assembly:* http://www.parliament.uk/commons/lib/research/notes/snpc-04407.pdf

61 Ministry of Justice, *The Governance of Britain,* July 2007, Cm 7170: http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf

> 144. Different laws and special legislation for Scotland did not begin in 1999. Indeed, it was a fundamental part of the early 18th century settlement, which led to and was enshrined in the Act of Union 1707, that the separate and distinct institutions of Scotland – its legal system, criminal and civil law, its church, its education system and much else – would continue to be respected. So for nearly three centuries – until 1999 – there was separate legislation for Scotland, and separate executive decisions affecting Scotland. The difference was that these were made by the Westminster Parliament, often without controversy, but sometimes, as with the introduction of the poll tax in Scotland in 1989, in highly controversial circumstances. The separate expenditure decisions were made by a single Minister, the Secretary of State for Scotland.[62]

In his statement on the green paper on 3 July 2007[63] Gordon Brown said:

> … but while we will listen to all proposals to improve our constitution in the light of devolution, we do not accept the proposal for English votes for English laws, which would create two classes of Members of Parliament—some entitled to vote on all issues, some invited to vote on only some. We will do nothing to put at risk the Union. I am reminded— *[Interruption.]*
>
> **Mr. Speaker:** Order. I want hon. Members and right hon. Members to listen to the statement. Obviously, there will be a chance for hon. Members to ask a supplementary question.
>
> **The Prime Minister:** I am reminded of the statement in 1999 by the right hon. Member for Haltemprice and Howden (David Davis), the shadow Home Secretary, who said that English votes for English laws would cause constitutional chaos …[64]

In response David Cameron said:

> As the Prime Minister did, let us turn to the relationship between different parts of the United Kingdom. Today, the situation is that neither he, nor I, nor any Member of the House has the right to vote on hospitals, schools or housing in his constituency or in other parts of Scotland, yet he is able to vote on hospitals, schools and housing in my constituency. We already have two classes of MP. Is it not the case that the only effective way to solve that problem is to give MPs in English constituencies the decisive say in the House on issues that affect only England? The Prime Minister has had 30 years to come up with answers to the West Lothian question, and I have to tell him that Question Time for regional Ministers just does not cut it. Does he not see that the failure to answer that question is actually putting the Union at risk?[65]

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62 ibid pp43-4

63 HC Deb 3 July 2007 cc815-20: http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070703/debtext/70703-0003.htm

64 c818: http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070703/debtext/70703-0004.htm

65 c821: http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070703/debtext/70703-0004.htm

and Gordon Brown replied:

> As for the third point of difference—again, I believe that we should seek consensus in the House on this matter—I have said that although I look forward to a discussion about the implications of devolution for our constitution, I do not believe that English votes for English laws is the answer. If the Conservative party wishes to continue to push that, it has to take into account the fact that the Executive would owe their authority to two different groups of people: on one occasion, to all Members of the House and on another occasion, simply to some Members of the House. That is why the shadow Home Secretary said in 1999 that it would cause constitutional chaos and why the right hon. and learned Member for Kensington and Chelsea (Sir Malcolm Rifkind) said only a few weeks ago:
>
> "It would weaken rather than strengthen the United Kingdom."
>
> Yes, we are prepared to look at proposals that will strengthen the United Kingdom in the light of devolution, but no, I do not believe that we will have a sensible debate if it is purely about English votes for English laws—something that would create two categories of Members in the House of Commons.[66]

Sir Malcolm Rifkind, referred to in the Prime Minister's statement on 3 July, later made proposals in a paper on devolution submitted to the Conservative Party's Taskforce on Democracy, chaired by Kenneth Clarke, in October 2007. These were reported in the press on 28 October, for example in the *Observer* which stated:

> The new idea which is certain to be rejected by Brown, is the brainchild of the Tories' former Scottish Secretary Sir Malcolm Rifkind who wrote a paper after Cameron instructed former Chancellor Kenneth Clarke to come up with a solution to the so-called 'West Lothian Question'. The question asks why Scottish MPs should be allowed to vote on matters relating to England when English MPs have no right to vote on matters relating solely to Scotland.
>
> Rifkind told The Observer last night: 'Since devolution there has been a growing English consciousness and that has given credence to the unfinished business of devolution. The issue is not an English Parliament. It is how you reform the way in which the House of Commons operates so that on purely English business, as opposed to United Kingdom business, the wishes of English members cannot be denied.'
>
> Rifkind's plan will be the key recommendation in a report to be published within the next few months by the Tories' Democracy Taskforce chaired by Clarke. Under the plan a future Tory government would establish an English Grand Committee at Westminster - open only to English MPs - where votes would be held on issues relating to England. This would sit on the floor of the House of Commons.
>
> Rifkind hopes that the new policy will be less controversial than the 'English votes on English issues' policy promoted by the Tories at the last two general elections. He told the *Observer*: 'The policy was a bit too simplistic: it would have created two

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[66] c823: http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070703/debtext/70703-0005.htm

> classes of MP with Scots not able to vote in the House of Commons. We have to deal with this problem in a more sophisticated way.'

and:

> Rifkind says his plan would not threaten the Union because at least half of the business of the House of Commons would still be decided by all MPs. Under his plan, the Speaker of the Commons would specify which matters would be decided by the new grand committee. These would be issues, such as health and education, which in Scotland are decided by the Holyrood Parliament.
>
> Scottish, English, Welsh and Northern Ireland MPs would still vote together on key UK issues such as taxation, foreign policy and the EU. Welsh MPs would sit on the grand committee for a transitional period because the Welsh Assembly has only secondary legislative powers.

David Cameron referred to the West Lothian Question in his speech "*Stronger together" – the importance of the Union,*[67] delivered at Dynamic Earth in Edinburgh on 10 December 2007:

> Of course, when it comes to the rise of separatist sentiment, some would seek to blame constitutional and economic arrangements.
>
> I do not believe this represents an adequate explanation: after all, issues like the West Lothian question and the Barnett formula have been debated in one form or another for decades.
>
> But that does not mean for one second that we can afford to ignore them today.
>
> It is essential that we seek answers to any unfairness in the Union, and to questions of accountability, justice and democracy.
>
> It is a sign of Labour's weakness and irresponsibility that they prefer to sweep these questions under the carpet, pretend they don't exist, simply because they are difficult.
>
> I want my Party to be better than that.
>
> So yes we will take part enthusiastically in the Constitutional Commission, and I applaud Annabel Goldie for her courage and determination to do that.
>
> And we will, after due consideration, bring forward our proposals on these matters.
> But we will address them in a calm and considered way.
>
> We have not leapt on the Barnett formula bandwagon.
> We have not sought to exploit these matters to foster a sense of English nationalism.
>
> And we never will, because we believe in the Union and we will never do anything to put it at risk.
> And that applies to the Conservative party's whole attitude to Scottish affairs..

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[67] http://www.conservatives.com/tile.do?def=news.story.page&obj_id=141137&speeches=1

The Commons Justice Committee is currently conducting an inquiry *Devolution: a decade on*[68] and the West Lothian Question/English Question has been raised in a number of the evidence sessions held so far.

For example, Kenneth Clarke, giving evidence on 19 February 2008,[69] said:

> [Q115]
> **Mr Clarke**: I think there is an English Question, as defined by Professor Bogdanor, and it is just confined to the problems that have arisen from devolution. In answer to the question of devolution, I think there are doubts about the legitimacy when legislation is passed by the votes of people whose constituents are not affected by it in their nation where there is now devolved power, and I think it is giving rise to a certain amount of English irritation which could sometimes get rather stronger. I do not share that; I think it is rather irritating. I personally find English anti-Scottish feeling or Scottish anti-English feeling childlike and perfectly all right as long as it is confined to the football stadium or the rugby match or something of that kind. Although it is not widespread, I actually think over the last ten years there has been a distinct growth in the number of people who are irritated by the relationship between Scotland and England and I would like to nip that in the bud by some sensible constitutional minor change, in my opinion, to finish the business of devolution.

and later:

> **Q128 Julie Morgan:** Could I ask Kenneth Clarke if you agree with Sir Malcolm Rifkind's proposals for "English votes for English laws"?
>
> **Mr Clarke:** No, I do not, but our taskforce has not quite finished its report yet.
>
> **Q129 Julie Morgan:** Are you considering that in your taskforce?
>
> **Mr Clarke:** Malcolm and I, as you may gather from my opening statement, are broadly agreed that the question should be asked and should be answered. I do not agree with the remedy that one should stop asking the West Lothian question, which has been said by various people, and Malcolm has come up with one answer. I do not think our taskforce would come up with exactly the same, but in principle we are heading in the same direction. When Malcolm recently made the news with this I was familiar with that, he had put it forward on several occasions - it is one way of tackling it - and, as all my taskforce is doing is giving advice to David Cameron and the Shadow Cabinet - I am not spokesman for the Conservative Party, it is for David Cameron and the Shadow Cabinet to decide what the policy is - well, they have got Malcolm's proposal before them as well, so they can compare it themselves.
>
> **Q130 Julie Morgan:** Do you think that the next Conservative manifesto will address the English Question?
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> **Mr Clarke:** I do not know. I would not want any responsibility for the next Conservative manifesto, but my guess, however, is, yes, it will. As a Conservative

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[68] http://www.publications.parliament.uk/pa/cm/cmjust.htm

[69] Justice Committee, *Devolution: a decade on,* Uncorrected transcript of oral evidence given on 19 February 2008: http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/uc75-iii/uc7502.htm

Member of Parliament, I would be very surprised if we put a manifesto forward at the next election which did not address the West Lothian question, and just to make it clear what our position was on devolution, which, I trust, on balance, is to accept devolution - there is no question of reversing devolution - with hindsight, we made a mistake in being so reluctant so long in allowing devolution to take place.

The Justice Secretary, Jack Straw, giving evidence on 13 May 2008[70] said:

Q664 Dr Whitehead: I imagine you do accept, however, that one of the outcomes of ten years of devolution certainly has been a renewed focus on what is generally called 'the English question'.

Mr Straw: Yes.

Q665 Dr Whitehead: Indeed you said, I think, on November 7 last year, "The phrase 'English votes for English laws' sounds beguilingly simple, but more than a cursory analysis reveals it has been completely unworkable. More than that, it would fatally undermine the Westminster Parliament and unravel the Union". Could you explain what you meant by that?

Mr Straw: I certainly can. The starting point for this is that devolution is asymmetrical, above all, because of the dominance of England in population and economic terms within the Union. There are very few other countries where you have anything like devolved arrangements or federated arrangements where the different nations or states have such striking imbalances in terms of their population. You could, if you wished, establish an English Parliament, and I happen profoundly to disagree with it, where you could say, "These items are a matter for a Parliament for England and then there is a federal parliament for the United Kingdom to deal with reserve matters", so that is one solution. It certainly does not recommend itself to my Party or to me and I do not think it recommends itself to the major Opposition Party. What all the evidence suggests, including historic evidence, is that, if you go down the route of trying within a single Parliament to have two classes of members and two classes of business, you end up with chaos in terms of the conduct of business and you also end up with chaos in terms of the conduct of the Government.

and later:

Q683 Dr Whitehead: The picture that you are setting out for us as far as ten years on from devolution is, as it were, the continuation of an asymmetric Parliament with the West Lothian question, I guess, parked in the car park for perpetually unanswered questions and a suggestion that local government may well, as it were, suck up some of the democratic deficit which, by your own statement a moment ago, applied in London, but also could equally be regarded as applying in English regions. Is that the formula or are there further plans which you think may tidy that up?

Mr Straw: The prior point about the so-called 'West Lothian question' is whether or not you accept that the United Kingdom's makeup in terms of its component parts is asymmetrical because of the huge dominance of England in terms of resources and of population and actually the resilience of its economy as well. If you do as I do and

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[70] Justice Committee, *Devolution: a decade on,* Uncorrected transcript of oral evidence given on 13 May 2008: http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/uc75-ix/uc7502.htm

> accept that, in the end, English Members can determine anything in the Union and, if we got together, we could completely dominate the Union if we wished, if we had a common purpose, as it were, against Scotland, Wales and Northern Ireland, but that certain consequences go with that, I am perfectly comfortable with those consequences because ultimately, whether a particular constitutional settlement is acceptable to all the peoples within it is not a matter of arithmetic, it is a matter of sentiment. I happen to think that this arrangement of the United Kingdom has served all parts of the United Kingdom very well for three centuries and can endure, provided each part of it accepts, as it were, a degree of self-restraint, and I think it is.

C. The territorial extent of bills and voting patterns

1. Background

Dr Meg Russell and Mark Sandford of the Constitution Unit have analysed election results 1945-2001 in the UK and England and shown the occasions when the governing party did not hold a majority of English seats.[71] They have also identified a number of occasions since 1999 in which Scottish votes have been held decisive in securing victory for the passage of Government legislation in areas devolved to Scotland.[72] The issue of fox-hunting in England and Wales attracted particular attention, since the Scottish Parliament had legislated separately.[73] For example, on 30 June 2003, 27 Scottish Labour MPs voted to end fox-hunting in England in all its forms in Division 260 on the *Hunting Bill 2002-03*.[74]

There were three divisions on the *Health and Social Care (Community Health and Standards) Bill 2003-04* relating to the controversial policy of foundation hospitals which attracted interest. On 18 November 2003, in Division 381 on Lords amendments to the Bill, of the Members representing English constituencies, 17 more voted against the Government than for the Government.[75] The Government won the division by 17 votes.

Division 38 on the *Higher Education Bill 2003-04* also attracted attention since, of Members representing English constituencies, 15 more voted against the motion than voted in favour.[76] This bill related to tuition fees for students from England. The motion passed by 5 votes.

In the 2005 Parliament, a smaller Government majority has led to renewed interest in the voting patterns of Scottish Members. In particular, there was interest in Divisions 163-165 on the *Health Bill* which related to banning smoking in public places in England and Wales. Scotland has its own legislation in this area. The votes took place on 14 February 2006 and on this occasion the Government majority was so substantial as not to be affected by the

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71 See Meg Russell and Guy Lodge, "The Government of England by Westminster", in Robert Hazell (ed), *The English question,* 2006, Table 4.4, p71

72 Ibid pp64-95

73 The *Protection of Wild Mammals (Scotland) Act*, banning killing a fox with dogs, was passed by the Scottish Parliament on 13 February 2002 and the ban came into effect on 1 August 2002.

74 On New Clause 11, during the report stage of the Bill, HC Deb 30 June 2003 c135-8: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030630/debtext/30630-38.htm

75 See Library Standard Note SN/SG/2768, *Divisions 381 and 388 on foundation hospitals: 19 November 2003.* For commentary, see Constitution Unit, *Monitoring Report: Devolution at the Centre,* February 2004: http://www.ucl.ac.uk/constitution-unit/monrep/centre/centre_february_2004.pdf

76 See Library Standard Note SN/SG/2878, *Division 38 on the Higher Education Bill*, for full details.

votes of Members with Scottish constituencies. The Scottish National Party (SNP) and the Conservative Member in Scotland (David Mundell) did not vote.

On the programme motion for the *Education and Inspections Bill 2005-06*, the main provisions of which did not apply to Scotland, the Government had a majority of 10.[77] There were 31 Labour rebels: 28 from English, 2 from Scottish and one from Welsh constituencies. One Conservative and one Social Democratic and Labour Party (SDLP) Member voted with the Government. 22 Labour MPs were absent from the vote: from 16 English, 4 Scottish and 2 Welsh constituencies. Here, the vote was complicated by intra-party dissent within the Labour Party, as assessed by the academic Philip Cowley.[78]

There is a full list of Labour backbench rebellions against Government bills since 1997 in Library Parliamentary Information List SN/PC/3038.[79] This does not differentiate in terms of territorial representation, but indicates votes where Government majorities have been slender.

Different political parties have adopted stances on the question of voting on English laws. The issue is complex, for a number of reasons:

1. The territorial application of a bill may be wider than set out in the territorial extent clause. As the Kilbrandon Commission noted: "any issue at Westminster involving expenditure of public money is of course of concern to all parts of the United Kingdom since it may directly affect the level of taxation and indirectly influence the level of a region's own expenditure". The operation of the Barnett Formula is of direct relevance here, since the Scottish, Welsh and Northern Ireland block is based on overall UK spending.[80]
2. There may well be cross-border implications, where an MP has constituents who access services in Scotland or Wales, or vice versa.[81]
3. Policies developed in England have implications for policy development in Wales or Scotland.
4. Scottish MPs do regard themselves, like all MPs, as representing not just their particular constituency, but also, in a more general sense, the UK and its people as a whole.

The Scottish Liberal Democrats, in their 1997 election manifesto, not only proposed a reduction in Scottish representation at Westminster and abolition of the of Secretary of State for Scotland, but also stated: "we believe that, following these reforms, Scottish Members of the UK Parliament should not participate or vote on matters where there is no Scottish

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77 Applying the normal conventions on identifying votes set out in Library Standard Notes SN/SG/2768 and SN/SG/2878

78 For further detail on Labour backbench rebellions since 2005: http://www.revolts.co.uk/Concentrated%20Minds.pdf

79 http://www.parliament.uk/commons/lib/research/notes/snpc-03038.pdf

80 Further information on the Barnett Formula is available in Library Research Paper 07/91 *The Barnett Formula*: http://www.parliament.uk/commons/lib/research/rp2007/rp07-091.pdf

81 These aspects are the subject of the Welsh Affairs Committee's current inquiry on the provision of cross-border public services for Wales: http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm

interest".[82] However, following the devolution settlements, the Liberal Democrats have not adopted this policy.

The SNP appears to have a policy of not voting on England-only legislation, but has on occasion voted against controversial legislation applying only to England, citing one of the grounds above.[83] For example, SNP members voted against the bills on foundation hospitals in 2002-03 and higher education in 2003-04, citing the funding implications and possibly adverse effects on the Scots. According to Russell, Tam Dalyell followed a self-denying ordinance from 1999, but decided to vote on the *Higher Education Bill 2003-04* because of the implications for higher education in Scotland. The only Scottish Conservative Member during the 2001 Parliament, Peter Duncan, abstained on the foundation hospitals bill, arguing that, "as a consequence of devolution, the decision on foundation hospitals in Scotland should be made by the Scottish Parliament".[84]

The Library has analysed voting 2001-02 – 2005-06 by Scottish Members at second reading on public bills not covering Scotland. This shows that the votes of Scottish Members have not affected the overall result of such divisions. See the table in Appendix I of Library Research Paper 07/24 *The House of Commons Participation Bill 2006-07.*[85]

As noted above, proposals to allow the certification of bills as applying to the various constituent parts of the United Kingdom have been made since 1893. There are a number of practical and political reasons which have made implementation difficult. These have been conveniently summarised by Dr Meg Russell as technical, political and constitutional.

2. Technical issues

Public bills commonly have clauses which define the territorial extent of proposed legislation, but although it may be possible to identify a bill as applying predominantly to England and Wales, there may be other clauses which apply to Scotland as well. This is a common occurrence, as other measures may be included within a bill covering a whole range of subjects. The Commons Library maintains a chart which gives the territorial extent of bills each session since 2000-01, available at: http://www.parliament.uk/documents/upload/tc_bills.xls. This illustrates the issue in detail. In seeking to differentiate voting on bills it would be possible to designate different divisions on various clauses or amendments applying to particular parts of the UK, but an increased number of divisions might lead to calls for electronic voting or greater use of the deferred division procedure.

The Scottish Affairs Committee recommended in 2005-06 improved explanatory notes to Bills, with more comprehensive indications of territorial extent and a list in Hansard of bills in

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82 *Make the difference: the Scottish Liberal Democrat manifesto 1997*, p45

83 'Salmond proposes English affairs committee and financial independence from Scotland', SNP press release, 4 December 2004

84 HC Deb 21 January 2004 c1393: http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040121/debtext/40121-22.htm#40121-22_spnew12

85 http://www.parliament.uk/commons/lib/research/rp2007/rp07-024.pdf 'Appendix 1 – Voting by Scottish MPs at second reading, public bills not covering Scotland', provided by Edmund Tetteh, Statistics Resource Unit

the Queens' Speech applying to Scotland.[86] Such a list appeared in Hansard after the Queen's Speech on 15 November 2006, (in a written statement by Douglas Alexander, the Secretary of State for Scotland, on 16 November)[87] and after the Queen's Speech on 6 November 2007 (in a written statement by Desmond Browne, Secretary of State for Scotland, on 7 November).[88] Peter Hain, the Secretary of State for Wales, announced on 13 December 2006 that the Government would in future make an annual statement on the implications of its legislative programme for matters that fell within the enhanced legislative competence of the National Assembly for Wales.[89] Peter Hain's written statement for 2007-08 was made on 7 November 2007.[90]

The use of the Legislative Consent Motion (Sewel Motion) convention, whereby the UK Parliament continues to legislate in devolved areas with the consent of the Scottish Parliament, adds further complications to proposals to certify bills as applying exclusively to individual parts of the UK.[91] The Library's territorial extent chart shows which UK Parliament bills had a Legislative Consent Motion (Sewel Motion) agreed in respect of them in the Scottish Parliament.[92] There may be practical ways to overcome these technical difficulties, such as changing drafting practice, but this is likely to result in more bills, more strictly defined as to territorial coverage.

The Welsh devolution settlement had until May 2007 left primary legislation at Westminster. Incremental changes following the *Government of Wales Act 2006* will gradually take effect and the National Assembly for Wales will, through framework powers in UK acts and Legislative Competence Orders acquire the competence to pass Measures which are quasi-primary legislation.[93] In general, England and Wales have a common statute book, therefore legislation designed to apply exclusively to Wales commonly also extends to England. Part of the rationale is to deal with cross border issues.[94] The question of applying an 'in and out' strategy to legislation affecting Wales is therefore quite complex.

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86 *The Sewel Convention: the Westminster perspective,* HC 983 2005-6:
http://www.publications.parliament.uk/pa/cm200506/cmselect/cmscotaf/983/98302.htm

87 HC Deb 16 November 2006 cc9-10WS
http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061116/wmstext/61116m0002.htm#06111635000029

88 HC Deb 7 November 2007 cc11-3WS:
http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm071107/wmstext/71107m0002.htm#07110721000027

89 HC Deb 13 December 2006 c1059W:
http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061213/text/61213w0001.htm#06121370000009

90 HC Deb 7 November 2007 cc14WS
http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm071107/wmstext/71107m0003.htm

91 For further information on the operation of the Sewel Convention see Library Standard Note SN/PC/2084 *The Sewel Convention:*
http://www.parliament.uk/commons/lib/research/notes/snpc-02084.pdf
and HC 983 2005-6

92 http://www.parliament.uk/documents/upload/tc_bills.xls

93 For further information see Library Research Paper 05/90 *The Government of Wales Bill*:
http://www.parliament.uk/commons/lib/research/rp2005/rp05-090.pdf
and Standard Note SN/PC/4407, *The Welsh Assembly elections 2007: the formation of the Welsh Assembly Government and recent developments in the Assembly*:
http://www.parliament.uk/commons/lib/research/notes/snpc-04407.pdf

94 One example is the *Children's Commissioner for Wales Act 2001*

3. Political issues

Much of the impetus for introducing 'English votes on English laws' derives from the political distribution of seats within the UK Parliament. The following table shows MPs by party and country at present:[95]

MPs by party and country, March 2008

	CON	LAB	LD	SNP	PC	DUP	UUP	Others
England	190	285	47	…	…	…	…	7
Wales	3	29	4	…	3	…	…	1
Scotland	1	39	12	6	…	…	…	1
Northern Ireland	…	…	…	…	…	9	1	8
Total	194	353	63	6	3	9	1	17

Source: House of Commons Library Members Database

The Conservatives hold one seat in Scotland and three in Wales and so their electoral strength is almost exclusively in England. Labour holds a preponderance of seats in Scotland and Wales and when the party has a narrow majority (as in 1974) it is dependent on support from these parts of the UK. Northern Ireland has a separate party system, though some parties have had formal or informal links with one of the major UK parties (as with the Unionists and Conservatives prior to the early 1970s and the Social Democratic and Labour Party (SDLP) and Labour), but at times its Members can hold the balance in a hung Parliament, as in March 1979, when the Callaghan Government lost a vote of confidence. Should the electoral geography change, these pressures are likely to be less acute. If some form of certification were introduced, the prospect of more complex voting decisions would lead to more complicated whipping arrangements, which might weaken party discipline.

Finally, it has been suggested that to require the Speaker to certify on territorial extent might subject the office to criticism, thus weakening the independence and status of the role. The Speaker already has power to certify Bills as money bills for the purposes of the *Parliament Acts*. Speaker's Counsel is available to the Speaker for legal advice.

4. Constitutional issues

Commentators have argued that holding separate votes on legislation affecting England would affect the devolution settlements and the operation of the Union.[96]

Under current constitutional conventions, all Members are treated as equal, and can vote on all matters, even where these matters do not have a direct impact on constituents. For example, all Members voted on the enactment of the *Greater London Authority Act 1999,* not just Members for London*.* A UK Government which could command a majority at Westminster only in reserved subjects, such as taxation, benefits and foreign policy, but which could not carry legislation on health, education and social services in England, would be profoundly different in nature from current conventions. In effect, a separate coalition of

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95 Provided by Ross Young, Social and General Statistics Section, 13.3.08

96 See for example, Vernon Bogdanor, *Devolution in the United Kingdom,* rev ed 2001, pp264-76; Robert Hazell, 'The continuing dynamism of constitutional reform', *Parliamentary Affairs* 60 (1) 3-25

parties would be needed to command a majority for legislation in England in these devolved areas. Because of the dominance of England within the Union, a federal solution on the lines of those developed for Canada or Australia presents particular difficulties.

Commentators have suggested that the outcome of such an 'in and out' policy would be the operation of a Parliament for England within or without the UK Parliament. There is a pressure group known as the Campaign for an English Parliament which campaigns on this issue on a non-party basis.[97]

Professor John Curtice has presented the results of poll surveys which indicated that there has been little popular enthusiasm for a Parliament for England, despite support for a form of 'English votes for English laws'. For instance, 49% of voters in England favoured a continuation of the present form of Government, with 23% preferring an English Parliament, although 67% agreed or strongly agreed that Scottish MPs should no longer be allowed to vote in the House of Commons on laws that only affect England.[98]

The Scottish Affairs Committee highlighted the extent of popular concern about the West Lothian Question:

> 49. It is a matter of concern to us that there are signs that English discontent with the current situation is becoming apparent. According to a report in *The Scotsman*, a recent poll, conducted by ICM for the BBC, indicated that 52 per cent of people in the UK believed it wrong that a Scottish MP should become Prime Minister, given that Scotland has its own Parliament. That figure rises to 55 per cent of people in England and 59 per cent of people in the South East of England, whereas only 20 per cent of people in Scotland thought it wrong.50
>
> 50. In order to address the West Lothian Question, there are usually four solutions proffered: the dissolution of the United Kingdom; English devolution; fewer Scottish MPs; or English votes on English laws. Although we make no recommendations on how to resolve this question, we considered it worth noting our concerns, with the hope that the matter will be comprehensively debated, and resolved, before the situation is reached whereby it could actually undermine the whole devolution settlement.
>
> 50 See *English blow to Brown's PM hopes, The Scotsman,* 15 May 2006.[99]

Lord Falconer, the Lord Chancellor, mounted a robust defence of the existing settlement at a devolution conference in March 2006 sponsored by Economic and Social Research Council (ESRC):

> Let us then assume, contrary to my argument, that we have English votes for English laws - if such a thing could be identified - or we establish an English Parliament, because that is what it would amount to.
> Parliaments for all the nations of the Union and an overarching federal Parliament too.

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97 See http://www.thecep.org.uk/

98 Derived from respondents in England to *British Social Attitudes Survey 2003*, presented in Table 6.11 in John Curtice, "What the people say - if anything" in Robert Hazell (ed), *The English question,* 2006

99 Scottish Affairs Committee, *The Sewel Convention: the Westminster perspective,* HC 983 2005-6: http://www.publications.parliament.uk/pa/cm200506/cmselect/cmscotaf/983/98302.htm

> The federal parliament would have responsibility for federal matters such as defence and the economy.
> But who would be calling the shots?
> Why would the English Parliament want to kow tow to the federal one?
> The English Parliament would control the greater part of the economic power of the UK.
> It would be the dominant political force.
> Leaving the federal parliament either voting on the back of what the English Parliament has already decided. Or hanging on to its coat tails.
> And where would this leave the other partner nations of the UK?
> No longer partners is the answer. But carried along on England's backdraft.
> We would end up, I believe, at exactly the point we had set out to avoid - unbalancing the relationship between the nations. How, under such circumstances, would the Union survive?[100]

Lord Falconer made similar points in a debate on the Treaty of Union initiated by the Conservative peer Lord Forsyth of Drumlean in the House of Lords on 25 January 2007:

> Scotland, Wales and Northern Ireland all have legitimate concerns that the overwhelming number of Members of Parliament representing English constituencies means that specific Welsh, Scottish and Northern Irish concerns can get lost when legislated for by the Westminster Parliament. Devolution provides the right balance between local and national concerns. It frees the constituent parts of the United Kingdom to innovate local solutions for local problems. If there are different policies in different parts of the United Kingdom, that is one of the purposes of devolution. Yes, the arrangements are asymmetric, but if we were seeking symmetry or even logic in the UK constitution, we would have to tear up most of it. We are not about constitutional symmetry. We seek practical changes for practical goals. The great strength of our constitution is its effectiveness. It can accommodate difference and rough edges in support of wider goals of national unity, affiliation to the institutions of the state and the service of those institutions to the public.
>
> But—and this is my second point of disagreement—I do not believe that it can accommodate an English Parliament or its proxy, the seductively entitled “English votes for English laws”. The noble Lord, Lord Shutt of Greetland, was right when he said that the critical point in this debate is not support for the union, which, with the one exception I referred to, all noble Lords are in favour of. Instead, the question is how best we achieve it. The big issue raised by this debate is whether English votes for English laws would promote the union or would, as I believe, be a significant step towards the break-up of the union.
>
> Make no mistake: if we were to introduce English votes for English laws in the other place—and I note that there does not seem to be any suggestion that it should be introduced in this House—that would simply be the first step on the way to an English Parliament, and the break-up of the union would follow. I echo the words of my noble friend Lord Anderson who said, “Those who blow on the flames of English nationalism may find that those flames consume the union”. I agree that that is what proposals about English votes for English laws would do.

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[100] ESRC Devolution and Constitutional Change Conference 10 March 2006, Department for Constitutional Affairs press notice. Full text available at: http://www.dca.gov.uk/speeches/2006/sp060310.htm

> Why, it has been asked, should there not be English votes for English laws when the Scottish Parliament votes on Scottish issues? The reason there is a Scottish Parliament is because England is over 80 per cent of the United Kingdom. England has over 80 per cent of the population, over 80 per cent of Members of Parliament and over 80 per cent of the country's GDP. If we had English votes for English laws, how would the system work? I cannot better the speech of the noble Lord, Lord Goodhart, who explained the absurdities and impracticalities that would arise. If we take what he said, and take it one stage further, all noble Lords would agree that the Government of the day must be formed by the party that commands a majority in the House of Commons. Is it seriously suggested that we could have a Government of the nation that could not pass legalisation in relation to England? That would be the effect of what is proposed. It is obvious that the moment that we do that, we end up in a situation where the United Kingdom Parliament gets completely dominated by English issues. The point of devolution is not a federation, because most constitutional experts who look at the concept of federation say that about 30 per cent is the largest that any one member of a federation can be without completely dominating it to the exclusion of its other parts. It is not a practical proposition, and it inevitably leads to an English Parliament.[101]

Lord Strathclyde, the Leader of the Opposition in the Lords said in the same debate:

> I agree with my noble friend Lord Crickhowell, who said that the dog is barking and biting. Sadly, every opinion survey shows the growing impatience of the English with the unequal relationships that flow from the present arrangements. Scottish MPs, who cannot even vote on reserved matters in Scotland, swan down to Westminster to impose policies on England that would not be accepted at Holyrood. The West Lothian question is a problem. It not only needs to be asked; it needs to be answered. It is hardly controversial in Scotland that MPs elected by the local electorate should not meddle in, for instance, English education when they can do nothing for the problems of local schools in their own constituencies.
>
> We need a parliamentary solution to this parliamentary problem. It is a problem that exists far less in this House than in another place. My right honourable friend David Cameron has asked the Conservative Party's democracy task force, led by Ken Clarke, to look at some solutions. We need to address the asymmetrical nature of current arrangements and we should do so in a calm and considered fashion. That does not include behaving like the honourable company of ostriches who inhabit the government Front Bench and the Liberal Democrat Benches; both those parties refuse to acknowledge the very existence of the problem. Alex Salmond could not ask for more effective allies in his campaign to break up the union, given the growing sense of unfairness, not as in the past in Scotland, but increasingly today in England. My party will fight, all the way, those in England or Scotland who see the solution as separation for Scotland.[102]

A BBC/ORB opinion poll for BBC Two's *Newsnight* programme on 16 January 2007 found, according to a BBC press release, that:

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[101] HL Deb 25 January 2007 cc1263-4: http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70125-0010.htm

[102] HL Deb 25 January 2007 cc 1258-9: http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70125-0009.htm

> When asked if an English parliament should now be established, 61% of those in England, 51% of those in Scotland and 48% of those in Wales thought it should.[103]

In the Hansard Society's latest *Audit of political engagement* (March 2008)[104] there is some evidence that the public are interested in and understand the West Lothian Question, in contrast to a host of other constitutional issues:

> A clear example of this is Scottish devolution and the subsequent call to resolve the so called West Lothian or English Question. Twenty-two per cent of the public now believe that urgent change is needed in relation to Scottish MPs being allowed to vote on English issues in the House of Commons, with 46% dissatisfied with the status quo. However, a government seeking to address this demand would have to consider the alternatives carefully, as some sections of the public will be opposed to an independent Scotland, and alternative constitutional arrangements for voting in the Commons will have knock-on effects on our parliamentary structure. Recent surveys have revealed there is little public appetite for the creation of an English Parliament: the latest British Social Attitudes survey found that only 22% of people born and living in England think that it would be the best way to govern England.

D. Private Members' motions and bills since 1997 on the West Lothian/English Question

1. *Referendum (English Parliament) Bill* 1997-98

This was a ballot bill introduced by the Conservative MP Teresa Gorman on 18 June 1997 (Bill 9 of 1997-98). It sought "to make provision for the holding of a referendum in England on the establishment and tax-varying powers of an English Parliament" and was debated on second reading on 16 January 1998 (debated adjourned).[105] The bill made no further progress.

2. *Referendum (English Parliament) Bill* 1998-99

This bill was introduced by Teresa Gorman under SO No 57 on 12 May 1999 (Bill 98 of 1998-99).[106] It sought "to make provision for the holding of a referendum in England on the establishment and tax-varying powers of an English Parliament". The bill was not printed (and made no progress).

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[103] http://www.bbc.co.uk/pressoffice/pressreleases/stories/2007/01_january/16/union.shtml
[104] http://www.hansardsociety.org.uk/blogs/parliament_and_government/archive/2008/03/27/audit5.aspx
[105] HC Deb 16 January 1988 cc589-660: http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo980116/debtext/80116-01.htm#80116-01_head0
[106] HC Deb 12 May 1999 c318: http://www.publications.parliament.uk/pa/cm199899/cmhansrd/vo990512/debtext/90512-23.htm

3. *House of Commons (Reserved Matters) Proposed Bill* 1999-2000

On 28 June 2000 the Labour MP Frank Field moved:[107]

> That leave be given to bring in a Bill to prescribe which Members of the House of Commons may participate only in proceedings on reserved matters under the Scotland and Northern Ireland Acts 1998 or may be appointed only to a ministerial office having responsibility for such matters.

In his speech Mr Field gave more detail of the purpose of his bill:

> The Bill seeks the authority of the House to create two powers. The first is to make Members from Northern Ireland and Scotland unable to vote in this House on matters that have been devolved to their Parliaments. In a second respect, the Bill seeks to limit the power of Members for seats in Scotland and Northern Ireland to hold United Kingdom Ministries, where the relevant powers have been devolved to their regional Parliaments.

The Conservative MP David Curry spoke in opposition to the motion which was subsequently negatived on division (131 to 190). Frank Field, therefore, did not obtain leave to bring in his bill.

4. *Parliament (Participation of Members of the House of Commons) Bill [HL]* 2005-06

On 10 February 2006 the Conservative peer Lord Baker of Dorking introduced the second reading debate on his *Parliament (Participation of Members of the House of Commons) Bill*,[108] which sought to prevent non-English Members voting on English matters:

> My proposals in the Bill are designed to resolve this matter. I seek to give the Speaker powers, or rather confirm powers that the Speaker already has, to certify the territorial extent of a Bill. He has that power and he has exercised it in regard to Scottish Bills. He would designate groups of MPs—English MPs, Scottish MPs, Welsh MPs and Northern Ireland MPs—allowing them to vote only on such Bills, parts of Bills and statutory instruments. That is the nub of my proposals.[109]

Lord Baker was supported by Lord Strathclyde, Leader of the Opposition in the Lords and Constitutional Affairs spokesman:

> In the Conservative Party, we agree with my noble friend Lord Baker that the West Lothian question needs to be addressed. Many noble Lords opposite accept that there is a problem but do not find my noble friend's solution favourable. There are also noble Lords opposite, however, who do not believe that there is a problem at all: the head-in-the-sand approach. They are in denial. Well, they ought to wake up and

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[107] HC Deb 28 June 2000 cc922-8: http://www.publications.parliament.uk/pa/cm199900/cmhansrd/vo000628/debtext/00628-09.htm#00628-09_head1

[108] HL Deb 10 February 2006 cc902-56: http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo060210/text/60210-03.htm#60210-03_head0

[109] ibid c906

> see what is coming down the tracks. We agree emphatically that, now that there is a Scottish Parliament and the Parliament at Westminster no longer speaks for the whole of the United Kingdom on domestic policy matters, it is not sustainable for policy in England on matters that are devolved to Scotland to be decided by the votes of MPs representing Scottish constituencies. That is not a nationalist agenda; it is certainly not a Scottish nationalist agenda. There will come a time, and it may not be long, when English people simply will not accept that. I wholly accept that that is not the case at present, but the feeling is out there, and it is growing. Speaking as a Scot and a passionate supporter of the union, I regret that. It will happen, however, and the matter will be startlingly personified when—I refer to the brief interchange between by noble friend Lord Baker and the noble Lord, Lord Maclennan of Rogart—Mr Gordon Brown becomes Prime Minister, as we now gather will happen some time next year.
> It is possible, of course, that Mr Brown might take the Simon Hughes option and decide to set an example by not voting on English Bills. After all, the current Prime Minister sets a striking example of abstinence in the voting lobbies, as we discovered last week. Somehow, however, I do not think so. This intensely serious matter, which could be solved by a convention of not voting, in the same way as the noble and learned Lords of this House do not vote on political matters under the Bingham declaration, will therefore have to be solved by statute.[110]

In response, Lord Falconer, the Secretary of State for Constitutional Affairs and Lord Chancellor, argued:

> Our national Parliament is sovereign in all matters. If it is to continue to remain at the heart of our union, all its members must be able to consider any matter before Parliament. At the heart of the argument advanced by the noble Lord, Lord Baker of Dorking, in favour of the Bill, is the proposition that if English MPs cannot vote on devolved matters because they are dealt with in Edinburgh, Belfast and Cardiff, then non-English Members of Parliament should not be able to vote on comparable matters in the national Parliament. That is, as I understand it, though it was never put like that, the essence of his case.
>
> To have some Members who can vote on some issues while others can vote on everything indubitably creates a two-tier system of MPs. Such a proposal, despite the claim of the noble Lord, Lord MacGregor, to speak at one stage for the people of Scotland, has no groundswell of support, either in England or Scotland. That is unsurprising, because it has absolutely no basis in principle.
>
> Devolution happened in Wales and Scotland because their peoples wanted it. The people of England have not been the victim of proposals forced on them almost exclusively by Scots and Welsh MPs. If every one of the non-English MPs coalesced they could not outvote the English MPs. Only if well over 200 English MPs and every non-English MP voted for a proposal can it get through.[111]

Lord Maclennan of Rogart, a Liberal Democrat peer, did not support the Bill, stating: "The Bill can best be understood as the partisan response of the Conservative Party to its declining appeal to the electors of Scotland and Wales in particular."[112]

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[110] ibid c945
[111] ibid cc948-949
[112] ibid c941

The Bill placed on the Speaker the duty to certify the territorial extent of each public or private bill (or part of a bill) before second reading and to designate which category or categories of Member can speak or vote on which provisions of the bill (including amendments). The Bill also required the Speaker to certify the territorial extent of a statutory instrument when laid before the Commons. Any such certificate would be conclusive and not questionable in the courts. No special procedures were included for the Lords, whose Members are not elected.

The Bill received a second reading, and passed all its stages in the Lords without further debate.[113] It did not make any make any progress in the Commons.

5. *House of Commons (Participation) Bill* 2006-07

This Bill was sponsored by Robert Walter, Conservative MP for North Dorset, who came sixth in the ballot for Private Members' Bills. The Bill was presented on 13 December 2006 and sought "to provide for the Speaker of the House of Commons to have power to determine the eligibility of members of the House of Commons to participate in certain legislative and other proceedings of the House".[114] It had bi-partisan support; its other sponsors being Derek Conway, John Redwood, Bill Etherington, Angela Browning, Christopher Fraser, Nigel Evans, David Taylor, Christopher Chope, Derek Wyatt, James Clappison and Peter Luff.[115] The Bill was debated on second reading on 9 March 2007.[116]

Introducing the second reading debate on 9 March, Mr Walter said:

> My Bill follows a similar Bill that was introduced in the House of Lords in the last Session by Lord Baker, which sought to do very much the same as what I propose. However, a number of anomalies were identified in his Bill. Therefore, the basic provisions of my Bill are that, in respect of primary legislation, the Speaker may designate whether it should be considered by
>
> "all members returned for constituencies in England and Wales"—
>
> thus taking account of the fact that Wales does not have primary legislative powers—
>
> "all members returned for constituencies in Scotland...all members returned for constituencies in Northern Ireland",
>
> or any combination of those.

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[113] The Bill received an unopposed third reading in the Lords on 18 April 2006

[114] HC Deb 13 December 2006 c888:
http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061213/debtext/61213-0006.htm#06121364000008
Bill 22 of 2006-07:
http://www.publications.parliament.uk/pa/cm200607/cmbills/022/07022.i-i.html

[115] For a detailed account of the provisions of the bill see Library Research Paper 07/24 *The House of Commons (Participation) Bill:*
http://www.parliament.uk/commons/lib/research/rp2007/rp07-024.pdf

[116] HC Deb 9 March 2007 cc1777-848
http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070309/debtext/70309-0001.htm#07030956000001

Oliver Heald (Conservative)[117] congratulated Robert Walter "on his success in the ballot, and on raising an important issue" and went on to say:

> I share my hon. Friend's concern that there is an imbalance in our constitution following devolution. Although devolution is well established and we support it, it raises an issue particularly as between England and Scotland that requires further consideration. At present, Members representing Scottish seats can help to decide matters for England over which they have no say in their own constituencies, and Members representing English seats have no say in domestic matters in Scotland, which are largely decided by the Scottish Parliament. There is a lack of reciprocity.

He described the work of the Conservative Party's democracy task force examining constitutional issues:

> My right hon. and learned Friend the Member for Rushcliffe (Mr. Clarke) is chairing a democracy taskforce examining constitutional issues in order to recommend improvements that the Conservative party may wish to consider as part of our policy review. We want to consider its recommendations and the reasoning for them before coming to decisions on the detail of these delicate and important matters. As my right hon. Friend the Member for Witney (Mr. Cameron) has made clear, we are committed to finding a constructive Unionist solution to the situation. This Government have often charged ahead with little thought for the consequences when undertaking fundamental constitutional reform. It is therefore vital that any reform that we may propose in future is based on a careful assessment of the options. Some of the implausible objections put forward this morning do not bear close examination, but we do want the detail looked into very carefully.

At the end of a wide-ranging debate with contributions from Labour, Conservative, Liberal Democrat and SNP Members the Parliamentary Under-Secretary of State for Constitutional Affairs, Bridget Prentice, replied on behalf of the Government.[118] She ended her speech:

> I will sum up my opposition to the Bill by stressing my belief in the Union—which many hon. Friends have also emphasised. By the strength of our common endeavour we achieve more than we achieve alone. I am sure that hon. Friends recognise the source of that comment. I do not believe that the Bill will rectify some perceived inequality in this House, but I do believe that if it is passed it will cause untold damage to our institution of Parliament, which has a tradition of unifying the peoples of our United Kingdom.
>
> My hon. Friend the Member for Edinburgh, North and Leith got very close to describing what would happen under the Bill in the way that I would wish to describe it. If we were to distinguish one Member of Parliament from another in terms of what they are and are not allowed to vote on, we would create a form of parliamentary apartheid. At the heart of the Bill is a call to establish institutional difference, which would extinguish the significance and power of the United Kingdom Parliament by creating two classes of Members and subsequently establishing a de facto English Parliament. The hon. Member for North Dorset talked about using this place as a place for the English Parliament. That is the context in which I put the Bill. The need

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[117] HC Deb cc1816-22
[118] HC Deb cc1844-8

to preserve the Union is paramount, and we must protect it from any hurried constitutional reform of this kind.

Since the Treaty of Union in 1707—it is appropriate that we are discussing this subject in the year that marks the 300th anniversary of that treaty—the United Kingdom Parliament has been a symbol of a united democracy that represents common values and welcomes differences of identity. Those are the qualities that we see embodied in all our nations today.

The Union was never about establishing uniformity or changing the uniqueness of each of the individual nations. It was developed through social, economic and political interdependence, and it became a symbol of huge achievements from which the peoples of all of our nations have benefited, and which they continue to enjoy.

We were brought together 300 years ago by a desire for stability and security. The Scots were keen to gain access to the overseas markets that England held in its possession.

The debate stood adjourned and no further progress was made on the bill.