

HOUSE OF COMMONS
MINUTES OF EVIDENCE
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JUSTICE COMMITTEE

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DEVOLUTION: A DECADE ON

Tuesday 22 April 2008

RT HON LORD STEEL OF AIKWOOD

RT HON JACK McCONNELL MSP

Evidence heard in Public Questions 457-531

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Oral Evidence

Taken before the Justice Committee

on Tuesday 22 April 2008

Members present

Mr Alan Beith, in the Chair

Alun Michael

Julie Morgan

Mrs Linda Riordan

Mr Andrew Turner

Mr Andrew Tyrie

Dr Alan Whitehead

Witness: Rt Hon Lord Steel of Aikwood, a Member of the House of Lords, gave evidence.

Chairman: Lord Steel, welcome. We have some interests to declare first of all.

Julie Morgan: I am married to the First Minister in Wales.

Q457 Chairman: We are very glad that you have agreed to come along this afternoon and give us the benefit of your experience presiding over and being a Member of the Scottish Parliament and observing the Scottish Executive, now calling itself the Scottish Government, in action. May I start with a rather specific point which is about Sewel motions? It has been suggested that this whole process needs clarifying and tidying up and that there need to be some clear principles setting out when the British Government will invoke the Convention. Given that a number of issues have come up even at the moment, for example over terrorist trials being moved between Scotland and England, do you think there is a framework that could be created to tidy this up?

Lord Steel of Aikwood: I probably cannot help you very much on that one because in my four years, we did not have any problem with it. It may be that there have been problems more recently, but certainly during the four years that I was presiding over the Parliament, there was general agreement when a Sewel motion was in operation and we did not have any problems. I have not lived through a time when there has been some argument about whether it was or not appropriate to use them.

Q458 Julie Morgan: As part of this inquiry we interviewed the Secretary of State for Scotland and I wondered what your view was about whether Scotland needs a voice at the Cabinet level post devolution?

Lord Steel of Aikwood: I always thought at the time when we were putting the Scotland Act through that it would have been sensible at that stage to have had a Cabinet minister for the UK with a junior minister under him for each of the entities: Scotland, Wales and Northern Ireland. That would have been a tidy arrangement. Technically that person would have had to have been Secretary of State for Scotland, Secretary of State for Wales, Secretary of State for Northern Ireland because of all the legislation, but it would have been a tidy arrangement and it would have avoided the criticism that there has been several times and is again currently about somebody holding a major Cabinet post and being Secretary of State for Scotland at the same time. I do not quite know why that did not happen. It would seem to me to have been the logical consequence of creating devolution all round.

Q459 Julie Morgan: Is this something you anticipated would have happened by now?

Lord Steel of Aikwood: Yes, I thought it would have happened by now. It still should happen.

Q460 Julie Morgan: What is your view of the Scottish Executive's claim that the residual functions of the Scottish Office and, in particular, the responsibility for elections to the Scottish Parliament, should be devolved to the Scottish Parliament?

Lord Steel of Aikwood: I believe that should happen. We were always told there would be a review of the Scotland Act after about ten years and I suppose effectively your Committee is part of that review and so are the Constitutional Commission and the National Conversation; they are all reviewing it after ten years. One of the lessons is that what I would call internal housekeeping ought to be devolved. If I can give you a particular example, an issue arose when I was ill with prostate cancer. We found it was very odd that Parliament had no power to appoint a temporary deputy presiding officer, so two of them had to carry the burden of three for a short period of two or three weeks and they found it really very difficult. It seems crazy that we would have to go back to Westminster and ask them to amend the Scotland Act to deal with a matter like that. That is a fairly trivial example, but yes, the whole raft of internal organisation of elections should sensibly be devolved.

Q461 Alun Michael: May I ask a supplementary on your reference to the idea of a Secretary of State for the United Kingdom with junior ministers to deal with the relations with the devolved organisations? Do you think that that Secretary of State should also have responsibility for regions within England as well in some way?

Lord Steel of Aikwood: That is the \$64,000 question. I have always said it is up to the English to decide what they want and not for us Scots or Welsh, with respect, to tell them what they should have. I do not have any views on that. Until the English decide whether they want to have the

equivalent of an English parliament it is an open question. I am not saying there should be an English parliament as such but an English entity within Parliament, an English grand committee or something like that or regions, which they have shown no appetite for, given the vote in the north east.

Q462 Alun Michael: It is an interesting answer because it seems you had an opinion in relation to Wales and Northern Ireland and perhaps for London.

Lord Steel of Aikwood: No, I do not equate the London Assembly with these other institutions.

Q463 Alun Michael: A pity. The draft Constitutional Renewal Bill was published in March and it requires the Minister for the Civil Service to publish separate codes of conduct for civil servants who serve the Scottish Executive or the Welsh Assembly Government. I wonder what your views are about that requirement and how codes of conduct for those two establishments might differ from the UK-wide Civil Service code.

Lord Steel of Aikwood: They need not differ at all, need they? Either we should continue as one entity or else we should learn from what is already happening. I see no case for attempting to re-invent the wheel on codes of conduct.

Q464 Alun Michael: Yes; it was not my suggestion so I was wondering what your view was and what your view is perhaps about the future of the unified Civil Service in the United Kingdom? Are there benefits for Scotland and indeed Wales or is it an obstacle in any way?

Lord Steel of Aikwood: No, it is not an obstacle. We have benefited in the cross-fertilisation of people from different government departments and I have not heard much clamour for a separate Scottish Civil Service.

Q465 Julie Morgan: How would you describe the cultural inter-governmental relationships during the time you were in the Scottish Parliament between the Scottish and the UK Governments in your experience?

Lord Steel of Aikwood: During my time it was very good and obviously Donald Dewar had been a member of the Cabinet before he was First Minister and so got off to a good start. We always said that the test of devolution would come when there were political differences between the Government at Westminster and the Government in Scotland and that, of course, has now happened. I do not have hands-on experience of it because I am retired, but I simply observe that there is a good deal of what I call needless irritation being created, presumably for political purposes, between the two and it comes from both ends. That is not particularly helpful.

Q466 Julie Morgan: Did you feel that the good relationship between Donald Dewar and Westminster was based on the personal mix and the same-party issue?

Lord Steel of Aikwood: That is true. After all, he was closely involved in the drafting of the Scotland Act, the Scotland Bill, and that followed right through to his occupying the post of First Minister, so it was relatively easy. Even under his successor, during my time in the chair, there were no great problems. There is not a real problem now, except that, for party purposes, there is a good deal of froth and what I call irritation being created unnecessarily.

Q467 Chairman: There was a joint ministerial committee which is supposed to facilitate these relationships but it seemed to fall into disuse and the Westminster Government have indicated that

it should be and perhaps will be re-convened; now that Paul Murphy has taken on the role of Secretary of State with this overall responsibility for devolution, that he might chair this ministerial committee. Did you have any awareness of its operations in the past?

Lord Steel of Aikwood: No. Sorry to remind you, but of course I was never part of the executive machinery; I was responsible for running the Parliament. I was not involved in that side of it at all.

Q468 Chairman: I asked the question because it suggests that if this machinery functioned at all, it was very well out of the gaze of Parliament.

Lord Steel of Aikwood: Absolutely; yes. I do not recall any reference at any time being made to it in Parliament, either questions about it or anything else. It did not happen.

Q469 Chairman: When there are disputes between the governments, is there any kind of arbitration process that could be put in place, particularly if they are quite technical ones such as how you interpret the Barnett formula or the Olympics or something like that. I am not going into the Barnett formula at the moment, I might come back to that, but where there are disputes of that nature is there any kind of arbitration process you could build in?

Lord Steel of Aikwood: Not really, you just have to rely on commonsense with ministers on both sides of the border.

Q470 Chairman: So it comes down to politics really in the end.

Lord Steel of Aikwood: Yes and sensible cooperation should not be out of the window simply because you have different political parties north and south of the border in charge.

Q471 Chairman: One of the symptoms of there being different parties involved at the moment is that there are two review processes, as you mentioned earlier, which are executive in their origin, the National Conversation and the Calman Commission. Is this a recipe for disaster, or can these processes be made useful?

Lord Steel of Aikwood: It is unfortunate that we have these two separate bodies; it would have been far better if we had had one organisation. However, there is a long history to this and I do not want to go back over the creation of the Constitutional Convention which led to the drafting of the Scotland Bill, but even then there were arguments about who was in and who was not in. So the argument has continued basically over the question of whether the Convention is or is not going to consider independence. I frankly have no objection to it considering independence because I think it would be rejected, so I do not know why it is not possible to look at it together in one forum. We now have two and we will have to live with that.

Q472 Mr Turner: Could I ask whether the only devolved institution introduced in England has been the Greater London Authority? Do you agree with that?

Lord Steel of Aikwood: It is a tier of local government; it is not quite the same.

Q473 Mr Turner: Why is that?

Lord Steel of Aikwood: It does not legislate.

Q474 Mr Turner: In your view is there a problem of legitimacy at present in either England or Scotland in terms of the English question?

Lord Steel of Aikwood: No, I do not think so. I go back to the time when, during the latter period of the Conservative Government, we had a very small minority of Conservative MPs from Scotland here and we had the Scottish Grand Committee of all the Scottish Members, of which they were a minority. Although we had the committee stages of Bills in the Committee, in the end the House of Commons determined the law for Scotland. The great majority of members were not affected by the law. Now that the thing is the other way round and a relatively small minority of Scottish Members can determine the law of England it is not nearly such an offensive proposition as what happened before, yet there were not many objections before and it worked.

Q475 Chairman: You have dealt with the first problem and then created a second. You have dealt with the problem of the English making the law of Scotland.

Lord Steel of Aikwood: The problem is a lesser one now than it was before.

Q476 Chairman: Can you explain that?

Lord Steel of Aikwood: Because you had the elected representatives of Scotland in a tiny minority in a chamber which determined the law of Scotland. Here you have the law of England determined by a chamber in which there is a minority of Scots. The outrage was stronger before than it is now. There was not much outrage, people lived with it, and they did in Northern Ireland as well.

Q477 Mr Turner: So it obviously was not that that caused the devolution in Scotland. What was it?

Lord Steel of Aikwood: That was a contributory factor because there came a point finally in the 1997 election when there were no Conservative MPs left in Scotland, so how could you organise a Scottish Grand Committee with the government side having nobody on it?

Q478 Mr Turner: In much the same way as you organise government in Northern Ireland.

Lord Steel of Aikwood: I am not quite sure how.

Q479 Mr Turner: There are no Conservative or Labour parties.

Lord Steel of Aikwood: The setup of the Scottish Grand Committee was every Member from Scotland met in the Scottish Grand Committee and you had the government side and the opposition side and with each passing election, the government side was dwindling until finally in 1997 it did not exist.

Q480 Mr Turner: Well the Opposition did continue to exist in Scotland as opposed to Liberals, did it not?

Lord Steel of Aikwood: Yes, you are right because the Government changed in 1997, but supposing the Conservatives had been re-elected in 1997, you would have had an impossible situation where the Government would have had nobody to man the Committee. It was a cumulative process.

Q481 Mr Turner: So that justifies devolution.

Lord Steel of Aikwood: No, it does not justify it; it was a contributory factor. You asked me if it contributed and I would say, yes, it contributed. Basically there has been a long campaign to restore the Scottish Parliament and indeed if you go back to the history of the Act of Union in 1707, you will find that the riots in the streets of Edinburgh were not about the Union, they were about the abolition of the Scottish Parliament. It was never really accepted by the Scots throughout history that Parliament should have been abolished when the Union was formed.

Q482 Mr Turner: I think the Irish Government also was supported by very few Irish people, yet it was possible in both 1992 and 1997 to formulate a government which had no representation of the Government. It had members but not members of the Government.

Lord Steel of Aikwood: I cannot comment on Ireland.

Q483 Mr Turner: Professor Mitchell identified five possible responses to the English question: providing symmetry through home rule of all four countries; no Scottish representation at Westminster or a reduction in such representation; parliamentary procedures including limiting the issues on which Scottish MPs can vote at Westminster; the maintenance of the current levels of parliamentary representation with no change. What are the advantages and disadvantages of each system?

Lord Steel of Aikwood: The obvious one to pursue is to create English-only committees. That is what happened under the previous arrangement for Scottish Bills, that the committee stage was dealt with purely by Scottish Members. There is no reason why the committee stage could not be dealt with purely by English Members, whether in an English grand committee so called or just standing committees. You have a United Kingdom Parliament and in the end, on report and third reading, the votes would have to come back to the chamber as a whole, but at least that would give a semblance of devolution to England in the legislative process.

Q484 Mr Turner: You say there is an obvious answer but I am not sure it is obvious.

Lord Steel of Aikwood: Simply because it follows the pattern of what we did in Scotland before. That is exactly what happened.

Q485 Mr Turner: But now we do not, so why not go that one step further in England?

Lord Steel of Aikwood: It is up to the English. I keep saying this: it is not for me to say what the English should do.

Q486 Mrs Riordan: Last week we had Lord Barnett at this Committee. Do you agree with him that the Barnett formula needs to be revised and, if so, how would you revise it?

Lord Steel of Aikwood: The formula itself is not the issue. I know he keeps going on about how unfair it is that it is based on population and not on need but if you stop to look at need in Scotland where you have a country with more farmers, more roads, thinner population, more people on benefit, more pensioners, more people on higher education ---

Q487 Chairman: You are describing my constituency.

Lord Steel of Aikwood: All I am saying is that, if you base the Barnett formula on need, I suspect the end result would not be very different from being based on population. My own view is that the issue which we ought to be addressing and which I hope the Commission will address is whether

any formula is the right way to finance the Scottish Parliament. I have said before, and I happily repeat here, that no self-respecting parliament can exist permanently on the basis of a grant from another parliament and that is why I support the view that we should be searching for ways of devolving revenue-raising powers as well as spending powers. I am not alone in that; I brought along this month's Holyrood magazine and Jeremy Peat, the economist, says this on page 49 "Scotland also exhibits a marked lack again in terms of international comparisons of revenue autonomy" and this is the bit "no other country within the OECD grouping exhibits this combination of highly limited devolution of revenue powers but close to total devolution of expenditure powers" and that contrast is what we ought to be looking at rather than replacing the technicalities of the Barnett formula with a Barnett formula Mark 2.

Q488 Mrs Riordan: If the Commission did recommend replacing the Barnett formula for Scotland, would the formula's continued use for Wales and North Ireland be credible?

Lord Steel of Aikwood: Well is the present one credible? It is a source of constant argument. There is a belief that the Scots are getting more than they deserve and this is borne out of people in England seeing, for example, no tuition fees, care for the elderly. What they do not understand is that that all comes out of the block grant. It is not that we are spending more money than we are entitled to, it is a block grant and, whether the block grant is on the existing Barnett formula or on the new formula, once it is passed over to the Scottish Parliament, it is up to them to decide how to spend it and if they decide to spend it a different way from down here, well that is devolution in action.

Q489 Mrs Riordan: I understand what you are saying but do you think any revision of that formula or the creation of a new mechanism should consider the distribution of public funding to the English regions? I know you talked about Scotland.

Lord Steel of Aikwood: I would have thought yes was the answer. If you were having any review of a continuing grant basis then clearly you would have to look at whether it was being fair to the other regions as well. I am looking particularly at the Chairman who represents a patch just over the border.

Q490 Chairman: You mentioned the fact that quite clearly expenditure in Scotland from the block grant involves making choices and choosing to spend more on certain particular things. Am I mistaken or is it the case that up to now we have not heard very loudly in the Scottish Parliament anything which conveys that other things are being squeezed in order to meet these particular commitments, that the level of block grant expenditure up to now seems to have protected Scotland from the intense argument about what it has to give up in order to have free tuition fees and in order to have free personal care for the elderly, or is that a mistaken impression from not reading the Scottish papers every week?

Lord Steel of Aikwood: It is a partly a mistaken version because of course the annual budget is debated hotly in Parliament and there is a finite amount of money and if you spend more on something here then there is less to spend on something else and that has always been the case through each year of the Parliament.

Q491 Mr Tyrie: You said a moment ago that no parliament should rely on a grant from another parliament, that at least in the long run you felt that was an unsustainable situation for something that wants to call itself a parliament and behave as a parliament. The logical continuum, to move across the spectrum from full grant payments to no grant payments at all, is full fiscal autonomy, is it not?

Lord Steel of Aikwood: It is quite difficult to achieve. If you retain the United Kingdom, however much you devolve revenue raising you are in the end always going to have to have some equalising measure or accounting responsibility at a UK level for matters of common interest, foreign affairs, defence, all these budgets.

Q492 Mr Tyrie: But full fiscal autonomy is a well understood notion in those countries which have high levels of devolution, including fiscal devolution. Is that the way you think we should go?

Lord Steel of Aikwood: I would certainly head in that direction.

Q493 Mr Tyrie: I was describing a continuum. What I was going to try to explore with you was whether you have in your mind some logical resting place on that spectrum that suits you, for which you find the arguments forceful.

Lord Steel of Aikwood: I did chair a commission which produced a very detailed report and it was helped by a number of people expert in this field, which I make no claim to be. They ended up by suggesting that income tax and capital gains tax were the two things that ought to be fully devolved.

Q494 Mr Tyrie: Do you think if we went down that road that the English question or the lion's share of the English question would in practice go away?

Lord Steel of Aikwood: It is largely a matter of perception. There is this perception that at the moment the Westminster Parliament is paying for things in Scotland, so my answer is yes. If it were seen that the Scots had to raise the money they spend, that would be thought to be reasonable.

Q495 Mr Tyrie: Do you agree that if we were to go down this road, we would have to re-open Barnett, even if, as you suggested a moment ago, who knows what the outcome might be? You also said a moment ago that if it were re-opened, who knows, one may find that their generosity was not in fact generosity at all but something that was equitable. Do you agree that inevitably, if we go down the road towards full fiscal autonomy to include, for example, income tax and corporation tax, we would have to open up the Barnett formula?

Lord Steel of Aikwood: Absolutely; yes, I do.

Q496 Mr Tyrie: One last thing. You made another very interesting remark. I hope I wrote it down roughly accurately, but you can correct me if I have not got it quite right. Until the English decide that they want a grand committee for English affairs - the phrase you used, implying that sooner or later the English are bound to say that they want an English grand committee. Do you think that it is also the case that sooner or later, inevitably, you also mentioned English-only committees to examine Bills that are clearly English only or dealing entirely with English matters? Do you think that that is an inevitable trend in which we will now move?

Lord Steel of Aikwood: I would have thought so, but that is a matter for your House.

Q497 Mr Tyrie: It is a matter for the English or it is a matter for the UK Parliament?

Lord Steel of Aikwood: The UK Parliament obviously. If you think that is a sensible way to proceed, and I personally do, it is a reasonable debate to have in the Commons.

Q498 Mr Tyrie: Do you think it is possible to find an adequate method of certification of Bills to distinguish between English-only Bills and Scottish Bills? Imagine a government that did not really want Bills to end up in English-only committees tacking a clause on that had some Scottish ramification to what was clearly designed for England.

Lord Steel of Aikwood: We used to have precisely that.

Q499 Mr Tyrie: It would be relatively straightforward, would it not?

Lord Steel of Aikwood: Already, as you know, the Speaker has to certify certain Bills as being money Bills. I cannot remember what other category he has. It is not an insuperable problem.

Q500 Mr Tyrie: It has been put to us, not this Committee but another committee, the democracy task force I served on with Ken Clarke, that it was an insuperable problem for some and that is why I am asking you.

Lord Steel of Aikwood: People are finding difficulties for every solution.

Q501 Chairman: Do you think the position of the second chamber, whether the House of Lords or a reformed second chamber, is actually or potentially anomalous or, conversely, do you see any merit in the idea that a second chamber should have a specifically United Kingdom role and serve in some way as a second chamber to parliaments in looking after England, Scotland, Wales and Northern Ireland?

Lord Steel of Aikwood: If you are looking ahead to an elected second chamber, replacing the present House of Lords, it would make sense to give it some role, in a way like the Bundersrat in Germany has, as a federal institution representing the different regions. Again, it is not for me to comment on English matters, but that might enable the English regions to feel that they have a locus as well in such a chamber.

Chairman: Lord Steel, thank you very much indeed.

Witness: Rt Hon Jack McConnell, a Member of the Scottish Parliament, gave evidence.

Q502 Chairman: Mr McConnell welcome. We understand that you have a rather different interview with the Foreign Affairs Committee tomorrow on an entirely different subject and possibly even different in character.

Mr McConnell: An interesting and challenging week.

Q503 Chairman: We wish you well on that occasion, which relates not to England, Scotland, Wales or Northern Ireland but to Malawi; an abiding interest which I know you have. We are going to follow a rather similar structure to that which we followed with Lord Steel so you can predict the direction we are going, but the emphasis will be different because of your experience in government. On the basis of that, what do you think about the Sewell motion issue? Is it easily manageable? Does it need clarifying and tidying up, perhaps along with the concordats as well, into some more codified basis?

Mr McConnell: The process of Sewell motions, as they were originally known - others have other descriptions - was actually a great asset for the Scottish Parliament. I took that view very strongly from the earliest days and I do not believe that there was ever a reasonable case made against that mechanism on any individual occasion on which it was used. The process of Sewell motions is a safeguard for the devolved institution. The principle at stake here is that Westminster cannot legislate for areas which are the responsibility of the devolved Scottish Parliament without the permission of that devolved Scottish Parliament. That seems to me to be an absolutely fundamental democratic principle, having established the Scottish Parliament, and the Sewell motion allowed that control to be exercised. At the same time, it facilitated the opportunity to legislate for the whole of the UK, when a bit of consistency was required and when the legislative programmes in both parliaments meant that it was better done here. I have no problem with the Sewell motion process whatsoever.

Q504 Julie Morgan: Does Scotland need a voice at Cabinet level now post devolution?

Mr McConnell: May I answer that in a slightly different way from the way Lord Steel did, because there are one or two things I would like to say to the Committee that I can perhaps fit into this answer. I always took the view when I was First Minister that it was the responsibility of the UK Prime Minister to determine the makeup of the Cabinet and it was the responsibility of the UK Parliament to determine some of the other issues that were just raised about the voting on solely English matters. There are issues about the makeup of the cabinet and these will ultimately be addressed in some way that will change the current arrangement. The most serious issue for the UK, not just for Scotland, is the response of wider UK institutions, perhaps including government and the Civil Service but much wider than that as well, to the way in which the UK has changed. The UK has changed dramatically and that change has not been reflected in the way in which UK institutions carry out their duties or the way in which different parts of the UK learn from each other. I give you one example, which is the policy that we had in Scotland on immigration, which was to deal with a particular problem we had in Scotland of a declining population. It was a very big success, it was a bit of flexibility introduced by the then Home Secretary David Blunkett and as an example of the way in which UK government departments have to become a bit more flexible in responding to Scotland, Wales, Northern Ireland and indeed parts of England it was a very good and successful example. It was done by bilateral discussion between me and the Home Secretary and did not involve a Secretary of State for Scotland or any intermediaries. Those bilateral relationships are very, very important but they should also be celebrated by the whole and then used to improve policy at the centre, rather than just seen as something that happens in one part of the kingdom and is not relevant to anybody else.

Q505 Julie Morgan: Are you saying that those bilateral relationships with different government department ministers are as important as the relationship with the Secretary of State or more important?

Mr McConnell: Far, far more important. One of the reasons why the JMCs were effectively, in terms of meetings, abandoned by agreement between myself and the Prime Minister, certainly in relation to Scotland, was because we wanted to create much stronger relationships, bilateral relationships, between the individual departments in devolved Scotland and the individual departments of Whitehall and it was certainly the case between 2003 and 2007 that the relationships between my Justice Minister and the Home Secretary or between our Transport Minister and the Transport Secretary and so on, were significantly stronger and far, far more productive than they would have been if we had continued to have an amorphous discussion through JMCs or deal with everything simply through a Secretary of State for Scotland.

Julie Morgan: What do you see as the role of the Secretary of State for Scotland?

Q506 Chairman: Before you answer that may I just check what you said about the JMCs? Are you saying it is not really worth resurrecting them because they are much more diffuse than the useful bilateral relationships you described?

Mr McConnell: Given the common situation, both in Scotland and to some extent in Wales with the coalition government there and in Northern Ireland with a re-established assembly and government there, I can see there being a purpose in some kind of mechanism that allows discussion between all four and perhaps occasionally also on a bilateral basis in a formal committee-type session. I would not be against the re-establishment of some JMC-type format, but it is important to understand that they did not just wither on the vine; a conscious decision was made to stop the JMCs meeting in order to facilitate and encourage a much stronger bilateral relationship. I think it improved policy. The changes, for example, in rail were agreed between transport ministers in a way that was by far the most constructive and positive way to do that. The agreement in Scotland on immigration visas similarly was a bilateral decision. There were other similar decisions and, not every discussion resulted in a positive decision. There is an ongoing discussion about air guns, for example, that continues to this day, but by and large the bilateral discussions were much more successful than the JMCs. However, I do understand that right now we do have a situation in which the UK Government needs to find a forum in which to have discussions with the three devolved governments and some form of JMC probably needs to be re-constituted.

Q507 Chairman: Would it be better to see it as a sort of referee or longstop body if the bilateral structures are not working in any particular case?

Mr McConnell: It would be better if it were seen as a forum for dialogue rather than for dispute resolution. That may be impossible but it would be better if it were that.

Q508 Julie Morgan: What do you see as the role for the Secretary of State for Scotland?

Mr McConnell: The role for the Secretary of State for Scotland in my view is that legal and technical responsibility that is set out in statute. I am not convinced there is a case for an intermediary or a referee.

Q509 Julie Morgan: What did you think of Lord Steel's proposal of one member of the Cabinet with responsibility for all the devolved bodies and the junior ministers in each devolved body?

Mr McConnell: Before last May I would have said, and I did say, that such an arrangement was inevitable. Since last May, and this is not just in relation to Scotland, if you look at things from a UK perspective, you have a decidedly more public antagonistic relationship between the UK Government and the Scottish Government. You have a slightly different political administration in Wales and you have a brand new administration in Northern Ireland. Whereas before last May I would have been saying both on the record and privately that such an arrangement was inevitable, given that that change had not been made prior to 2007, at the moment it would probably make sense to continue the discussions that have begun about how best to get the right level of coordination between the administrations before anybody makes dramatic changes to the Cabinet structure.

Q510 Julie Morgan: What about the Scottish Executive's claim that the residual functions of the Scottish Office should be devolved to the Scottish Parliament, in particular the elections to the Scottish Parliament?

Mr McConnell: I take the view on powers - and I take this view on financial powers but in relation to other powers too - that it is absolutely right ten years on from the Scotland Act being introduced to have a review of powers. I very much welcome this Committee's inquiry. A UK perspective on that review is essential. I also welcome the Calman Commission that has been established more recently in relation to Scotland and the ongoing debates in Wales are very welcome too. At the same time, any changes in the current arrangements need to be very, very carefully considered. That is particularly true in relation to finance but it is also true in relation to other areas where there could be further devolutionary change as well. Elections are an example. There is an awful lot of immediate commonsense and the idea of one body being responsible for all the decision making in relation to the elections in Scotland. At the same time, however, those decisions have an impact elsewhere in the United Kingdom too and therefore, before a decision is made to devolve any further powers, administrative or legislative powers in relation to the Scottish elections, there needs to be some kind of agreement between the UK Government and the Scottish Government on the way in which those powers would be exercised to ensure that the cohesiveness of the UK is not damaged as a result and it is that kind of sensible approach which is required here. When we devolved the rail powers back in 2004 when Alistair Darling was Secretary of State for Transport, we did it by discussion; we agreed a budget, we agreed a timetable, it has been a very smooth transition. It has actually improved the railways rather than damaged them, but it was done in a very sensible and constructive manner. If there are going to be any further transfers of powers of any kind, then I would hope that we could move away from the getting-boxed-into-corners approach that seems to be happening and instead have specific discussion on the practicalities and the evidence for a change and then how it could be implemented.

Q511 Alun Michael: It really follows on from that because you have been talking about values and quality, rather than necessarily having to create lines where none are necessary and it relates to another area which is the draft Constitutional Renewal Bill. This has something in it which requires the Minister for the Civil Service to publish separate codes of conduct for civil servants who serve the Scottish Executive or the Welsh Assembly Government. I must say that I am a little puzzled by that because it seems to me that one of the options might be to have something in that code about how the different civil servants of different bodies deal with each other, but it requires those separate codes. What is your view of that?

Mr McConnell: I may surprise you with my view on this. If anything has been wrong in that relationship over the last few years, it has been that the reduction in interchange between the civil servants working for the Scottish Government and the civil servants working for the UK Government. Most of the best civil servants that I worked with as First Minister in my nearly six years in that position and previously as both Finance Minister and Education Minister too, I would say had experience of working for Whitehall departments as well as working for the old Scottish Office or for the new devolved Scottish Government. However, I had detected a very distinct trend over the last eight years that there is less of that interchange taking place. I have expressed my concerns about this on a number of occasions to the last two Cabinet Secretaries in Whitehall as well as to the Civil Service management in Scotland. Young, ambitious, able civil servants should get experience of Whitehall departments, if they want to work in Scotland at high level, and actually I also think that young, ambitious, able civil servants in Whitehall departments should be made to go to work for one of the devolved administrations for a short time and understand the complexity of the modern United Kingdom. I worry about the creation of an entirely separate Scottish Civil Service. I can say honestly to the Committee that never once in my eight years as a minister in Scotland, nearly six years as First Minister, was the technical membership of the Home Civil Service for Scottish civil servants a problem in terms of ministers in Scotland directing civil servants in the policies that they should pursue. Civil servants in Scotland knew that ultimately I

was, as First Minister, their political boss, they did not look over their shoulder to a Whitehall department or to senior management there. They worked to our ministerial team and Cabinet. If anything, the problem is not a need to separate the civil servants more; it is actually to integrate them more because that is a danger, not a political danger to the United Kingdom but a danger to the quality of the civil servants that work for the different governments.

Q512 Alun Michael: That is a very comprehensive and clear reply. It follows from that, does it not, that your view would be that there ought to be a single code, albeit that single code might need to have elements within it that paid regard to the devolution settlements?

Mr McConnell: A consistent set of values and principles on which the Civil Service operates across the whole UK is a good thing. Within that, there need to be specific arrangements for reporting accountability, promotion and so on and it is entirely appropriate that that would be the case.

Q513 Chairman: We have covered a lot of very helpful ground there. Perhaps I should just ask you about these dual processes which are currently going on, the National Conversation and the Calman Commission. Can good come of this?

Mr McConnell: I hope that good can come of reviewing the settlement. I am not convinced, in a political climate where the political parties are in a stand-off situation, particularly in the buildup to a UK general election at some time in the next two years, that there is going to be an awful lot of discussion that is productive for the longer term. I do believe a review is important, but at the same time I want to see such a review look at the evidence of the way powers have been used, the relationships. It is easy in a situation, for example, where the issue of nuclear power is controversial and where the Scottish Parliament takes a different view, not just the Scottish Government but probably the whole Scottish Parliament, on nuclear power from the UK Parliament and the UK Government. It is easy for that then to become extrapolated into a demand for separate energy powers in Scotland and there are bigger issues than that at stake in energy policy. It is important to make decisions on powers because this is what was done when the Scotland Act was prepared. The powers were looked at separately from day-to-day issues and in an energy review of powers it is absolutely essential that the long-term implications of devolving more powers are looked at, rather than any short-term gut reactions or spontaneous reaction to it, a political disagreement on one issue and one decision.

Q514 Chairman: But we still have to have these discussions, do we not?

Mr McConnell: Yes.

Q515 Chairman: We were not creating a devolution system on the assumption that all levels of it would always be run by the same party or people of the same views: we were creating a system of devolved government in which people were bound, at some point or other, to elect different administrations in different parts of the United Kingdom.

Mr McConnell: Yes. Even where the same party holds the ministerial positions in different administrations, it should be welcomed that there will be differences in approach.

Q516 Chairman: It was not always sweetness and light, was it?

Mr McConnell: No, it was not at all and there were genuine debates taking place, but also the UK is a complex formulation. There are different needs and demands in different parts of the United Kingdom and one development that is still to happen in the UK is for those Whitehall departments

which rightly retain reserve powers to become a bit more flexible in the use of those powers. I, for example, discussed with five different secretaries of state, under various names, Work and Pensions, Social Security, whatever the department was called at different times, the possibility of using Scotland as an area where different methods could be tried to deal with the issue of incapacity benefit and unemployment and trying to get people back into work. I felt Scotland was a manageable size with a particular problem where the department could try something out and, if it worked in Scotland with our assistance and health and housing and so on, it could then perhaps be implemented elsewhere in the UK. Unfortunately none of those secretaries was in position long enough ever to implement the idea. The same could be true of Wales, the same could be true in Northern Ireland perhaps and actually perhaps in some parts of England. Different policies could be tried out and then used elsewhere in the country if they are successful. The UK Government or Whitehall departments should not be nervous about that. They should welcome the opportunity. We implemented the Fresh Talent visa in Scotland to deal with a population decline problem, to attract in particular more overseas students who come to Scotland to stay in the country to live and work and that has now been copied for the rest of the country by the Prime Minister since he took over last summer and that is an example of something that would probably never have happened in the UK if we had not tried it first. The smoking ban is another example. If we had not gone first, then I do not think that would have been implemented in England ultimately. So trying things out in different parts of the UK can be very positive and maybe there needs to be a slight culture change in Whitehall to welcome that diversity rather than be threatened by it.

Chairman: I do not know how much you want to say about England, but I must give Mr Turner the opportunity to probe you on the subject.

Q517 Mr Turner: What is your view that there is a problem of legitimacy at present in England in terms of the English question?

Mr McConnell: I understand the issue and I can understand English Members of Parliament wanting to search for a solution. I am not absolutely convinced that there is an easy solution. I was just reading, as I was watching Lord Steel's evidence session, the notes about the Committee. This is a Committee that has no Scottish MPs on it, but many of the responsibilities of the Committee do have an impact across the whole of the UK. Although it is primarily concerned, I presume, with the English and Welsh legal systems, many of the Committee's responsibilities cover the whole of the UK. We need to be careful that we do not end up inside the House of Commons losing that common UK identity, British identity, for the mother of parliaments rather than just simply to deal with what is perhaps an immediate political tension.

Q518 Mr Turner: So if there were to be an English Parliament, it should be outside this building.

Mr McConnell: I personally feel that English Members of Parliament might find that hard to justify to the population; it is entirely for you but I think it might be hard to justify. I can see that there could be ways in which the rules of the House of Commons could be adapted to deal with some of these issues and I have to say that I may be of a different generation to Lord Steel, but I take a very similar approach to him on this, that if there is a will to find a solution and to make regular judgments that are commonsensical and can work in practice, then I suspect the House of Commons is able to do that; it has been for hundreds of years and there is no reason why it cannot in the 21st century either.

Q519 Mr Turner: If, as some of us believe, the Barnett formula leads to Scotland having more money per head than England, is it surprising that it appears to have emerged - I do not know what you feel about it - that you are just letting go of one in favour of getting another expenditure?

Mr McConnell: Those of us who believe that it is in the interests of the people of Scotland, Wales, England and, for as long as they want it, Northern Ireland, to have a United Kingdom and that some of these nations are stronger than if we were all separate, need to be careful about making direct comparisons that are simply based on the existence of those national boundaries. If there is an issue about public expenditure in some parts of England, it is at least as much, if not possibly more, about the distribution of public expenditure inside England than it is about the distribution of expenditure between England and Scotland. There are undoubtedly issues that have arisen as a result of decisions of the Scottish Parliament that have given rise to this as a political issue but there are implications of that. A nationalist government have made decisions this winter. Let me give you two examples: one to abolish the graduate endowment, which was the payment that students paid after graduating, effectively a different form of graduate tax but a payment that was made, money that all went to higher education; at the same time our universities and colleges will now receive a smaller increase in their budget than their counterparts south of the border. I voted against the decision but there were implications in that decision. Similarly, we are moving towards an abolition of prescription charges. The Health Service budget in Scotland is rising significantly less quickly than the Health Service budget in England over these next three years, so there are implications to their decisions. Although it looks as though they are making decisions that make things free in Scotland, there will be a price to pay for that in the quality and the quantity of the service that is available in those two cases, in higher education and in the Health Service and it is unfortunate that that then becomes an issue about the distribution of funding across the whole UK. It should actually be a debate primarily inside Scotland about whether they have got it right or not. In my view they have got it wrong.

Q520 Mr Turner: I am sure that is for debate, but the point is surely there is a lump sum for Scotland which is spent by Scotland in the way Scots wish which is a higher proportion, about 15%, than in the whole of England and also for Wales some elements are higher. You have not responded to that particular point.

Mr McConnell: The historical reasons for that have been well laid out and have been justified by both Conservative and Labour Governments here in the past. The debate around the distribution of money between Scotland and England actually distracts from what might be the real debate that needs to take place, which is inside England itself. I say very much as an observer that there are different needs in different parts of England and those debates have not taken place because primarily the politicians have focused more on the national debate.

Q521 Mr Turner: So you might advocate regional instead.

Mr McConnell: There needs to be a far healthier debate inside England about the way public expenditure is used in different regions of the country. It is not for me to tell members how to conduct their business, but as long as members who represent constituencies inside England are focused on what Scotland has, or for that matter what Northern Ireland or Wales has, then perhaps they are not contributing to that debate that will basically need to be resolved because there are Whitehall departments spending a lot of money in England and it is being spent in different areas in different ways.

Q522 Mr Tyrie: I was hoping to be exceedingly quick because I thought I was going to be able to ask you whether there is anything on the issue of the Barnett formula and the issue of the English question which Lord Steel said with which you disagreed, but I think there is. At one point in your replies it appeared that there was not anything but there is, is there not? I do not think you are in favour of moving a long way across that spectrum on fiscal autonomy, whereas Lord Steel is quite

clear that there is something to be said for devolution on income tax or CGT and once that is done, he feels that the Barnett formula will need looking at again, even if it might result in pretty much the same arrangement as before.

Mr McConnell: On the one hand, there is a need to discuss the financial purpose of the Scottish Parliament and the financial responsibility that it has alongside perhaps the ongoing debate about how much money it has to spend. It is right that the current block grant plus or minus three pence income tax was designed back in the early 1990s at a time when income tax was 30 pence or so in the pound, when there were no differential rates. They are about to change, are they not? It is also right that after ten years of devolution there is a good hard look at that and international examples to see whether there is a better way of securing financial accountability and responsibility and potential economic benefit in Scotland. On the other hand, I have been involved in this debate now since the late 1980s in terms of detail. I was a member of the Constitutional Convention Executive Committee, I have obviously been both Finance Minister and First Minister and I have yet to see someone produce a workable alternative that would have the consent of enough politicians and across a wider spectrum in Scotland. The business community in Scotland is very nervous about fiscal autonomy, very nervous. They operate as part of a single market across the UK, the idea of differential tax rates in different parts of the UK worries them significantly and I understand that.

Q523 Mr Tyrie: But where are you on this is what I am asking?

Mr McConnell: I am trying to say that there is a case for looking at the current settlement, but the case has not yet been made to move away from that to a new arrangement. If you start from a position of fiscal autonomy, you are starting from a dangerous position because you are starting from a position that effectively creates two different taxation regimes inside the UK single market and that is difficult economically. If you start from the position of wishing to move incrementally towards more taxation powers, then the Scottish Parliament have to think that through extremely carefully, look at international evidence and try to design a system that is workable. My preference on that would probably be that it is taken away from the politicians, some form of royal commission or something of that sort that would look at this in some detail, look at the evidence and come back with a reasoned report that could be considered by all parties, perhaps after the next general election. I would say that was worth looking at.

Q524 Mr Tyrie: Just to be clear, you are making the recommendation that there be a royal commission to examine the Barnett formula?

Mr McConnell: I would not put it as strongly as to say I was making a recommendation, but I would suggest that that kind of format for looking at this would be more appropriate than a political debate where people are essentially making political points through the debate on fiscal powers.

Q525 Mr Tyrie: I am sorry to press you, but what are you recommending?

Mr McConnell: I am sorry to be unhelpful, but I hope what I am saying is consistent in that I believe that the current arrangement does require to be reviewed but I also believe that any change in the current arrangement is extremely difficult and needs to be discussed, debated and analysed with great care by everyone involved and all the parties have people with different positions on this.

Q526 Mr Tyrie: So you favour a review of the Barnett formula.

Mr McConnell: I am not yet persuaded that there is a workable alternative.

Q527 Mr Tyrie: You are not yet persuaded there is an alternative; you are not persuaded that it would come out with something different, radically different from the current structure. I do not want to put words in your mouth I just want to clarify what you said. As for how that review should be conducted, you think one possibility would be a royal commission but you have no hard and fast views on exactly how to conduct the review.

Mr McConnell: That is very close to my position.

Q528 Mr Tyrie: Just add or subtract so that we can be clear for the record what your opinion is.

Mr McConnell: I am persuaded of the case for looking at the financial powers. I am not persuaded of the case for any specific alternative yet. I would be concerned about the idea of what is described as full fiscal autonomy. I believe that there is a need for some independent analysis and review of this perhaps by a body like a royal commission. However, the one positive thing that I would say, because that might appear to be very negative, is that I do not believe that it is beyond the intelligence of the good people of the United Kingdom, academics, politicians, civil servants and others, to come up with a workable alternative, but nobody has yet.

Q529 Chairman: For six years you had the power to implement a degree of fiscal autonomy, by either raising income tax or lowering income tax to a different level from that in the rest of the UK. Was it political paralysis that you never did so?

Mr McConnell: It was a decision about priorities. First of all, it would have been difficult to justify any money that we would have raised or we would have taken out of the taxation system against the administrative costs of such a change. That is an absolute primary contribution to the judgment that has led to all the parties not using that power or proposing its use over the last eight years. Beyond that I took the view that we had, as a number one priority in Scotland, a need to raise the level of economic growth and that the way in which we did that was to invest in skills and transport infrastructure and promoting Scottish business abroad and that that was more important than to think about the taxation system.

Q530 Mr Tyrie: Did you agree or disagree with Lord Steel's conclusion that there was an inevitability about a move towards English committees in the UK Parliament to deal with English-only legislation certified by the Speaker?

Mr McConnell: Like him, I am hesitant to comment on the work of Members of this House from constituencies in England but I suspect that this is the kind of debate that will rise and fall depending on who is in power and who is in opposition and what the distribution of constituencies is across England rather than necessarily being a point of principle.

Q531 Mr Tyrie: Lord Steel gave us a very clear indication of the direction of change. I am asking you whether you agree with his conclusions about the direction of change.

Mr McConnell: I do not think that change is inevitable. Continuing debate is inevitable but change is not inevitable.

Chairman: We have been able to cover a great deal of ground and we are very grateful to you for your help this afternoon. Thank you very much indeed.